

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

BIOVIE INC.

Form: SC 13D/A

Date Filed: 2021-04-27

Corporate Issuer CIK: 1580149

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No. 3)*

BIOVIE INC.

(Name of Issuer)

Common Stock, par value \$0.0001 per share

(Title of Class of Securities)

09074F 108

(CUSIP Number of Class of Securities)

**Terren S. Peizer
Acuitas Group Holdings, LLC
2120 Colorado Avenue, #230
Santa Monica, California 90404
310-444-4321**

(Name, Address and Telephone Number of Person Authorized
to Receive Notices and Communications)

April 27, 2021

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a Statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D and is filing this Schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box. "

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 240.13d-7(b) for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SCHEDULE 13D

CUSIP No. 09074F 207

Page 2 of 6 Pages

1	NAME OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY) Acuitas Group Holdings, LLC
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions) (a) " (b) "
3	SEC USE ONLY
4	SOURCE OF FUNDS (See Instructions) OO
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) "
6	CITIZENSHIP OR PLACE OF ORGANIZATION California

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER 0
	8	SHARED VOTING POWER 11,168,538
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 11,168,538
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 11,168,538	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) "	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 80.0% ¹	
14	TYPE OF REPORTING PERSON (See Instructions) CO	

1 Based on 13,958,516 shares of Class A common stock, par value \$0.0001 per share (the "Common Stock"), of BioVie Inc., a Nevada corporation (the "Company" or "Issuer"), issued and outstanding as of April 26, 2021.

SCHEDULE 13D

CUSIP No. 09074F 207		Page 3 of 6 Pages	
1	NAME OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY) Terren S. Peizer		
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions) (a) " (b) "		
3	SEC USE ONLY		
4	SOURCE OF FUNDS (See Instructions) OO		
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) "		
6	CITIZENSHIP OR PLACE OF ORGANIZATION United States of America		
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER 0	
	8	SHARED VOTING POWER 11,168,538	
	9	SOLE DISPOSITIVE POWER 0	
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13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 80.0% ²		
14	TYPE OF REPORTING PERSON (See Instructions) HC; IN		

AMENDMENT NO. 3 TO SCHEDULE 13D

This Amendment No. 3 to Schedule 13D (this "Amendment") amends and supplements the Schedule 13D previously filed by Acuitas Group Holdings, LLC, a California limited liability company ("Acuitas"), and Terren S. Peizer ("Mr. Peizer") (collectively, the "Reporting Persons") on July 3, 2018, as amended by Amendment No. 1 filed on September 25, 2019, and Amendment No. 2 filed on September 23, 2020 (as so amended, the "Original Statement" and, as amended and supplemented by this Amendment, the "Statement"), relating to the Class A common stock, par value \$0.0001 per share ("Common Stock"), of BioVie Inc., a Nevada corporation (the "Company" or "Issuer"). The address of the Issuer's principal executive office is 2120 Colorado Avenue, #230, Santa Monica, California 90404.

Except as specifically amended by this Amendment, items in the Original Statement are unchanged. Capitalized terms used herein that are not defined have the meaning ascribed to them in the Original Statement.

ITEM 4. PURPOSE OF TRANSACTION

Item 4 of the Statement is hereby amended and supplemented to include the following information:

"On April 27, 2021, Acuitas and NeurMedix, Inc., a Delaware corporation that is indirectly wholly owned by Mr. Peizer ("NeurMedix"), entered into an Asset Purchase Agreement, dated as of April 27, 2021 (the "Purchase Agreement"), by and among the Company, NeurMedix and Acuitas (solely for purposes of Section 10.16 thereof). A copy of the Purchase Agreement is attached hereto as Exhibit 10.2.

Pursuant to the Purchase Agreement, the Company has agreed to acquire certain assets from NeurMedix and assume certain liabilities of NeurMedix, in exchange for the consideration described below (the "Transaction"). The purchased assets include, among others, those related to certain drug candidates being developed by NeurMedix, including NE3107, a small molecule orally administered inhibitor of insulin resistance and the pathological inflammatory cascade, with a novel mechanism of action that has potential applications for treatment against Alzheimer's Disease and Parkinson's Disease.

Pursuant to the Purchase Agreement, at the closing of the Transaction, the Company will issue to NeurMedix 8,356,240 newly issued shares of the Issuer's Common Stock and make a cash payment equal to the aggregate amount of NeurMedix's direct and documented cash expenditures to advance certain clinical programs from March 1, 2021 through the closing, which cash payment is estimated to be approximately \$3.0 million. Immediately following the consummation of the Transaction, the Reporting Persons will beneficially own in the aggregate 87.5% of the issued and outstanding shares of the Issuer's Common Stock. In addition, subject to the terms and conditions of the Purchase Agreement, following the closing, the Company will be obligated to deliver contingent consideration to NeurMedix (or its successor) consisting of (i) a cash payment of approximately \$7.3 million, subject to a pivotal clinical trial for NE3107 meeting its primary endpoint(s) and the Company having successfully raised at least \$50 million in new capital after the date of the Purchase Agreement, and (ii) newly issued shares of the Issuer's Common Stock having an aggregate value of up to \$3.0 billion (determined as set forth in the Purchase Agreement), but not to exceed such number of shares that, together with all other shares of the Issuer's Common Stock beneficially owned by the Reporting Persons as of such time, would represent in the aggregate 89.9999% of the total shares of the Issuer's Common Stock issued and outstanding immediately upon such issuance, subject to the achievement of certain clinical, regulatory and commercial milestones related to the drug candidates to be acquired by the Company from NeurMedix, as more fully set forth in the Purchase Agreement. The Transaction is anticipated to close in the second quarter of calendar year 2021.

The foregoing summary of the Purchase Agreement is qualified in its entirety by reference to the complete copy of the Purchase Agreement attached hereto as Exhibit 10.2 and incorporated herein by reference."

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

Items 5(a) and (b) of the Statement are hereby amended and restated as follows:

"(a) The approximate aggregate percentage of the Issuer's Common Stock beneficially owned by the Reporting Persons, as reported herein, is based on 13,958,516 shares of Common Stock of the Company issued and outstanding as of April 26, 2021, resulting in the Reporting Persons beneficially owning approximately 80.0% of the issued and outstanding Common Stock of the Issuer.

(b) The Reporting Persons beneficially own an aggregate of 11,168,538 shares of Common Stock, representing in the aggregate approximately 80.0% of the total issued and outstanding shares of Common Stock of the Company. The Reporting Persons have the shared power to vote or direct to vote, and the shared power to dispose of or direct the disposition of, such shares of Common Stock. Although Mr. Peizer does not directly own any of the Company's securities, he may be deemed a beneficial owner of the securities owned by Acuitas pursuant to Rule 13d-3 of the Securities Exchange Act of 1934, as amended."

Item 5(c) of the Statement is hereby supplemented with the following:

"Except as described in this Statement, the Reporting Persons had no transactions in the Common Stock of the Company in the past sixty (60) days."

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER

Item 6 of the Statement is hereby amended and supplemented to include the following information:

"The information set forth in Item 4 of this Statement is incorporated herein by reference."

ITEM 7. MATERIALS TO BE FILED AS EXHIBITS

Item 7 of the Statement is hereby amended and supplemented to include the following information:

["10.2 Asset Purchase Agreement, dated as of April 27, 2021, by and among BioVie Inc., NeurMedix, Inc., and Acuitas Group Holdings, LLC, solely for purposes of Section 10.16."](#)

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: April 27, 2021

ACUITAS GROUP HOLDINGS, LLC

By: /s/ Terren S. Peizer

Terren S. Peizer, Chairman

/s/ Terren S. Peizer

Terren S. Peizer

ASSET PURCHASE AGREEMENT

by and among

BIOVIE INC., AS BUYER,**NEURMEDIX, INC., AS SELLER,**

and

ACUITAS GROUP HOLDINGS, LLC, AS GUARANTOR

Dated as of April 27, 2021

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Exhibit E	Form of Seller FDA Letter
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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of April 27, 2021, by and among BioVie Inc., a Nevada corporation ("Buyer"), NeurMedix, Inc., a Delaware corporation ("Seller"), and Acuitas Group Holdings, LLC, a California limited liability company ("Guarantor"), solely for purposes of Section 10.16. Buyer, Seller and the Guarantor may be referred to herein, collectively, as the "Parties" and, individually, as a "Party."

WHEREAS, Seller desires to sell, transfer and assign (or cause to be sold, transferred and assigned) to Buyer, and Buyer desires to purchase from Seller, the Acquired Assets, upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, for U.S. federal income tax purposes, it is intended that the purchase of the Acquired Assets, followed by the Seller Liquidation (as defined below), will qualify as a "reorganization" within the meaning of Section 368(a)(1)(D) of the Code, and that this Agreement will be, and hereby is, adopted as a "plan of reorganization" for purposes of the Code and the Treasury Regulations; and

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties, covenants and agreements herein contained, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
SALE AND PURCHASE OF ASSETS; CLOSING

1.1 Sale and Purchase of Assets; Assumption of Assumed Liabilities.

(a) Upon the terms and subject to the conditions hereof, at the Closing, Seller shall sell, assign, transfer and deliver (or cause to be sold, assigned, transferred and delivered) to Buyer, and Buyer shall purchase from Seller, all right, title and interest in, to and under the Acquired Assets, free and clear of all Liens (other than Permitted Liens) in exchange for (i) the Purchase Price, which shall be payable as set forth in Section 1.4(b) and Section 1.5, and (ii) the assumption by Buyer of the Assumed Liabilities.

(b) Upon the terms and subject to the conditions hereof, at the Closing, Buyer shall assume and agree to pay, perform and discharge when due the Assumed Liabilities. Notwithstanding anything to the contrary in any Transaction Document, (i) Buyer shall not assume, and Seller shall remain primarily liable for, and shall pay, perform and discharge when due, the Retained Liabilities and (ii) Buyer shall not acquire any Excluded Assets.

(c) Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign or transfer, and the Acquired Assets shall not include, any Contract or Permit, or any claim, right or benefit arising thereunder or resulting therefrom, if (i) an attempted assignment or transfer thereof, without the consent of a Third Party thereto or of the issuing Governmental Authority, as the case may be, would constitute a breach thereof and (ii) such consent is not obtained prior to the Closing (each, a "Deferred Item"). In such case, (A) such Deferred Item shall be withheld from sale pursuant to this Agreement without any reduction in the Purchase Price due pursuant to Section 1.1(a), (B) from and after the Closing, Seller and Buyer will cooperate and use commercially reasonable efforts to obtain such consent as soon as practicable after the Closing, and (C) until such consent is obtained, Seller and Buyer will cooperate with each other in any reasonable alternative arrangement (including subleasing or subcontracting, if permitted) to provide (or cause to be provided) to Buyer the economic benefits under such Deferred Item, including, to the extent permitted by applicable Law or the applicable Contract or Permit, enforcement for the benefit of Buyer of all claims or rights arising thereunder, and, if Buyer so receives such economic benefits, to relieve Seller of the burdens intended hereby to be assigned to and assumed by Buyer in respect of such Deferred Item.

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1.2 Pre-Closing. No less than three (3) Business Days prior to the Closing Date, Seller shall deliver to Buyer wire transfer instructions for payment of the Initial Cash Payment to Seller by wire transfer.

1.3 Location and Date. The consummation of the transactions contemplated pursuant to this Agreement (the "Closing") shall take place by remote exchange of documents and signatures on the second (2nd) Business Day following the date on which all conditions to the Closing set forth in Article VI shall have been satisfied or waived (other than those that by their terms are not contemplated to be satisfied until the time of the Closing, but subject to the fulfillment or waiver of such conditions at the time of the Closing), or on such other date and/or time as Buyer and Seller may mutually agree in writing. The date on which the Closing actually occurs is referred to herein as the "Closing Date."

1.4 Closing Deliveries.

(a) Deliveries by Seller. Upon the terms and subject to the conditions contained herein, at the Closing, Seller shall deliver (or cause to be delivered) to Buyer the following:

(i) Conveyance Documents.

- (A) a Bill of Sale substantially in the form attached hereto as Exhibit A, duly executed by Seller;
- (B) one or more Patent Assignments substantially in the form attached hereto as Exhibit B, duly executed by Seller;
- (C) one or more Trademark Assignments substantially in the form attached hereto as Exhibit C, duly executed by Seller; and
- (D) one or more Copyright Assignments substantially in the form attached hereto as Exhibit D, duly executed by Seller;

(ii) FDA Letter. Duly executed letters to the FDA transferring to Buyer the rights to the applicable Transferred Permits issued by the FDA, in substantially the form attached hereto as Exhibit E (the "Seller FDA Letter");

(iii) Instrument of Assumption. The Instrument of Assumption substantially in the form attached hereto as Exhibit F, duly executed by Seller;

(iv) Registration Rights Agreement. The Registration Rights Agreement substantially in the form attached hereto as Exhibit G, duly executed by Seller (the "Registration Rights Agreement");

(v) Lien Releases. Duly executed written instruments releasing any Lien on any Acquired Asset (other than Permitted Liens) and authorizing the filing of UCC-3 termination statements (or other comparable documents) for all UCC-1 financing statements (or other comparable documents) filed in connection with any such Lien (other than Permitted Liens);

(vi) Secretary's Certificates. A certificate executed by the Secretary of Seller certifying that attached thereto are (A) true, complete and correct copies of the Charter Documents of Seller, as in effect on the Closing Date, and, in the case of Charter Documents publicly filed in the State of Delaware, certified by the Secretary of State thereof, (B) true, complete and correct copies of resolutions duly adopted by the Board of Directors of Seller and the Sole Shareholder, authorizing the execution, delivery and performance of the Transaction Documents and the transactions contemplated thereby, which resolutions have not been modified, rescinded or revoked,

- (vii) Closing Certificates. A certificate executed by the Chief Executive Officer and Chief Financial Officer of Seller providing the certifications required by Sections 6.1(a) and 6.1(b);
 - (viii) Good Standing Certificates. Certificates issued by an appropriate authority of the State of Delaware and each other jurisdiction in which Seller is qualified to do business, certifying as of a date no more than five (5) Business Days prior to the Closing Date that Seller is in good standing under the Laws of such jurisdiction;
 - (ix) IRS Form W-9. An IRS Form W-9 for the Sole Shareholder (or its sole owner, if the Sole Shareholder is classified as a disregarded entity for U.S. tax purposes);
 - (x) Liquidation. Evidence of adoption by Seller of a Seller Plan of Liquidation, in a form reasonably satisfactory to Seller and Buyer, contingent on completion of Buyer's acquisition of the Acquired Assets pursuant to this Agreement;
 - (xi) Books and Records. Copies of all Product Books and Records; and
 - (xii) Other Documents. All other consents, certificates, documents, instruments and other items required to be delivered by Seller pursuant to the Transaction Documents or that are reasonably necessary to give effect to the transactions contemplated hereby or to vest in Buyer good and valid title in and to the Acquired Assets free and clear of all Liens (other than Permitted Liens).
- (b) Deliveries by Buyer. Upon the terms and subject to the conditions contained herein, at the Closing, Buyer shall deliver:
- (i) Closing Consideration. The closing consideration shall be delivered at the Closing as follows:
 - (A) Buyer shall pay to Seller, by wire transfer of immediately available funds, in accordance with (to the extent made available to Buyer) the wire transfer instructions delivered pursuant to Section 1.2, the Initial Cash Payment; and
 - (B) Buyer shall deliver the Initial Stock Consideration issued in book entry form to Seller.
 - (ii) FDA Letter. Duly executed letters to the FDA assuming responsibility for the applicable Transferred Permits issued by the FDA, in substantially the form attached hereto as Exhibit H (the "Buyer FDA Letter");
 - (iii) Instrument of Assumption. The Instrument of Assumption substantially in the form attached hereto as Exhibit F, duly executed by Buyer;
 - (iv) Registration Rights Agreement. The Registration Rights Agreement substantially in the form attached hereto as Exhibit G, duly executed by Buyer; and
 - (v) Closing Certificates. A certificate executed by an authorized officer of Buyer providing the certifications required by Sections 6.2(a) and 6.2(b).

1.5 Contingent Consideration. The Contingent Consideration shall be payable by Buyer as set forth in this Section 1.5.

(a) Contingent Cash Amount. Subject to the terms and conditions of this Agreement, Buyer shall pay to the Seller Successor additional cash payments up to an aggregate of \$7,261,224.21 (the "Contingent Cash Amount") contingent upon the satisfaction of the following conditions: (i) a Pivotal Clinical Trial for NE3107 for the treatment of Alzheimer's Disease meeting its primary endpoint(s); and (ii) Buyer having successfully raised (in one or more transactions) at least \$50,000,000 in new capital after the date of this Agreement (together, the "Contingent Cash Conditions"). Subject to the satisfaction of the Contingent Cash Conditions, on the closing date for each capital raise completed by Buyer from and after the Closing (including the first capital raise upon completion of which the Contingent Cash Condition set forth in clause (ii) above has been satisfied, provided that the net proceeds of such capital raise exceed \$75,000,000, and provided, further, that if the managing underwriter for such capital raise advises Buyer in writing that, in its reasonable view, marketing and execution factors require a reduction in the Contingent Cash Amount payable from such capital raise, then Buyer shall so inform the Seller Successor and the Contingent Cash Amount shall be so reduced), Buyer shall pay to the Seller Successor an amount in cash equal to 10% of the net proceeds of the applicable capital raise (up to the Contingent Cash Amount), by wire transfer of immediately available funds in accordance with wire transfer instructions delivered by the Seller Successor to Buyer at least two (2) Business Days prior to the closing date for such capital raise, until the Contingent Cash Amount has been paid in full.

(b) Contingent Stock Consideration.

(i) Upon the achievement of the milestones set forth in the table below (the "Milestones") for any of the products set forth on Schedule 1.5(b) (the "Milestone Products"), Buyer shall issue to the Seller Successor shares of Buyer Common Stock (the "Contingent Stock Consideration") having the aggregate value set forth with respect to the applicable Milestone in the table below, which shall be determined as set forth in clause (ii) below (it being understood, for the avoidance of doubt, that each Milestone may be achieved only once).

Milestone	Value of Buyer Common Stock
A. A Pivotal Clinical Trial for any Milestone Product meets its primary endpoint(s).	\$ 350,000,000
B. The FDA accepts an NDA for any Milestone Product, provided that 50% of this Milestone shall be payable earlier upon the filing of a marketing authorization application for any Milestone Product with the European Medicines Agency.	\$ 700,000,000
C. The FDA approves an NDA for any Milestone Product, provided that 50% of this Milestone shall be payable earlier upon the grant by the European Commission of marketing authorization for any Milestone Product.	\$ 1,200,000,000
Net Sales for all Milestone Products together reach at least \$1,000,000,000 during any fiscal year of the Buyer.	\$ 750,000,000

(ii) The number of shares of Buyer Common Stock to be issued by Buyer to the Seller Successor pursuant to this Section 1.5(b) upon the achievement of any Milestone shall be determined by dividing (x) the value of the Buyer Common Stock set forth with respect to the applicable Milestone in the table set forth in Section 1.5(b)(i) above by (y) the Buyer Trading Price for the ten (10) consecutive Business Days commencing on the third (3rd) Business Day following public announcement of the applicable Milestone, which, in the case of Milestones A, B and C in the table set forth in this Section 1.5(b), Buyer shall publicly announce on a Current Report on Form 8-K within four (4) Business Days of the occurrence of the applicable Milestone, and, in the case of Milestone D in the table set forth in this Section 1.5(b), Buyer shall publicly announce in its Annual Report on Form 10-K for the applicable fiscal year. Buyer shall issue the shares of Buyer Common Stock constituting the Contingent Stock Consideration with respect to any applicable Milestone to the Seller Successor within five (5) Business Days following the determination of the number of shares of Buyer Common Stock to be issued. Notwithstanding the foregoing, if, following the issuance by Buyer of the shares of Buyer Common Stock constituting the Contingent Stock Consideration following the achievement of a Milestone, the total ownership of the Seller Successor and its Affiliates of shares of Buyer Common Stock (including in the numerator of such calculation any shares of Buyer Common Stock Transferred by the Seller Successor or its Affiliates to a Third Party after the date of this Agreement) would exceed 89.9999% of the Buyer Outstanding Shares, Buyer shall reduce the number of shares of Buyer Common Stock issuable upon achievement of the applicable Milestone such that, following issuance of the applicable shares of Buyer Common Stock, the Seller Successor and its Affiliates would own 89.9999% of the Buyer Outstanding Shares (including in the numerator of such calculation any shares of Buyer Common Stock Transferred by the Seller Successor or its Affiliates to a Third Party after the date of this Agreement).

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(c) Upon consummation of any Fundamental Transaction, the applicable Successor Entity shall expressly assume Buyer's obligations under this Section 1.5 and deliver to the Seller Successor confirmation in writing, duly executed by such Successor Entity, that (i) subject to the satisfaction of the Contingent Cash Condition set forth in clause (i) of the definition thereof, the Successor Entity shall pay (or cause to be paid) to the Seller Successor an amount equal to the Contingent Cash Amount, in the manner described in Section 1.5(a) (it being understood, for the avoidance of doubt, that the Contingent Cash Condition set forth in clause (ii) of the definition thereof shall be deemed to have been satisfied upon consummation of such Fundamental Transaction), and (ii) following achievement of any remaining Milestones after the consummation of such Fundamental Transaction, the Successor Entity shall pay or issue, as applicable (or cause to be paid or issued, as applicable), to the Seller Successor, in lieu of the shares of Buyer Common Stock constituting the Contingent Stock Consideration that would otherwise have been issuable to the Seller Successor pursuant to Section 1.5(b), at the Seller Successor's election, either (A) an amount in cash equal to the value of Buyer Common Stock with respect to the applicable Milestone, as set forth in the table set forth in Section 1.5(b)(i), or (B) such shares of stock, securities, cash, assets or any other property whatsoever, if any, that the Seller Successor would have been entitled to receive upon the closing of such Fundamental Transaction had the shares of Buyer Common Stock constituting the Contingent Stock Consideration with respect to the applicable Milestone been issued immediately prior to the closing of such Fundamental Transaction (it being understood and agreed that, if the Buyer Common Stock no longer trades on a national securities exchange following such Fundamental Transaction, the price per share paid for Buyer Common Stock in such Fundamental Transaction shall be substituted for the Buyer Trading Price in calculating the number of shares of Buyer Common Stock constituting the Contingent Stock Consideration that the Seller Successor would have been entitled to receive upon the achievement of the applicable Milestone). No later than the closing date of any Fundamental Transaction, Buyer shall disclose to the Seller Successor all material information relating to such Fundamental Transaction (including the material terms and conditions thereof). The provisions of this Section 1.5(c) shall apply similarly and equally to all successive Fundamental Transactions.

(d) Contingent Consideration Books and Records. Buyer shall keep, and cause its Affiliates and sublicensees to keep, complete and accurate Books and Records in sufficient detail to calculate and verify all Contingent Consideration payable under this Agreement. At the request of the Seller Successor, Buyer shall permit the Seller Successor or an independent, nationally recognized auditor designated by the Seller Successor and reasonably acceptable to Buyer, at reasonable times and upon reasonable notice, to audit the Books and Records maintained pursuant to this Section 1.5(d) to ensure the accuracy of all Contingent Consideration paid hereunder.

(e) Preservation of 368(a) Reorganization. Prior to making any payment of cash or other property (other than Buyer Common Stock) pursuant under this Agreement (including the Initial Cash Payment and any portion of the Contingent Cash Amount), Buyer shall determine whether any such payment could reasonably be expected to cause the acquisition by Buyer of the Acquired Assets pursuant to this Agreement to fail to meet the "continuity of interest" requirement set forth in Section 1.368-1(e) of the Treasury Regulations (treating the required percentage of the "proprietary interests in the target" that must be preserved as 40%), and, if so determined, then Buyer shall, in lieu of making any such payment of such amount in the form of cash, make such payment in the form of shares of Buyer Common Stock to the extent necessary to cause such acquisition to satisfy the "continuity of interest" requirement set forth in Section 1.368-1(e) of the Treasury Regulations (it being understood and agreed that the number of shares of Buyer Common Stock to be issued pursuant to this Section 1.5(e) shall be determined by dividing (x) the amount of such cash payment by (y) the Buyer Trading Price for the ten (10) consecutive Business Days ending the third (3rd) Business Day before such cash payment would have otherwise been payable in accordance with Section 1.5(a) or Section 1.5(b), as applicable).

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(f) Offset; Withholding.

(i) Notwithstanding any other provision in this Agreement to the contrary, prior to Buyer making a payment of the Contingent Cash Amount pursuant to Section 1.5(a) or delivering shares of Buyer Common Stock constituting Contingent Stock Consideration pursuant to Section 1.5(b) to the Seller Successor, Buyer may offset against such Contingent Consideration any amounts then owed by Seller or the Seller Successor to Buyer pursuant to this Agreement (it being understood and agreed that any shares of Buyer Common Stock so offset shall be valued by reference to the Buyer Trading Price for the applicable Milestone, as determined in accordance with Section 1.5(b)(ii)).

(ii) Buyer or its agent shall be entitled to deduct and withhold, or cause to be deducted and withheld, from any amounts otherwise payable pursuant to this Agreement any amounts as are required to be deducted and withheld with respect to the making of such payment under the Code or any provision of any Tax Law with respect to the making of such payment. To the extent any amounts are so deducted or withheld and timely paid over to the appropriate Governmental Authority, the deducted or withheld amounts, as applicable, shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction or withholding was made.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF SELLER

To induce Buyer to enter into the Transaction Documents and consummate the transactions contemplated thereby, Seller hereby makes the following representations and warranties to Buyer, as of the date of this Agreement, except as disclosed by Seller in the written Disclosure Schedule provided to Buyer dated the date of this Agreement (the "Seller Disclosure Schedule"), which shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Article II. The disclosure in any section or subsection of the Seller Disclosure Schedule corresponding to any section or subsection of this Article II shall qualify other sections and subsections in this Article II as indicated by cross-references to such other sections and subsections, and to the extent that it is readily apparent on the face of such disclosure that such disclosure qualifies any other sections or subsections.

2.1 Due Organization. Seller is a corporation duly organized, validly existing and in good standing (tax and otherwise) under the Laws of the State of Delaware. Seller is in good standing (tax and otherwise) in each jurisdiction in which the failure to be in good standing would have a Seller Material Adverse Change. Seller has all corporate power and authority necessary to carry on its business (including the Business) and to own and use the properties owned and used by it. Seller has delivered to Buyer true, correct and complete copies of its Charter Documents. Seller is not in violation of, in conflict with, or in default under, its Charter Documents, and there exists no condition or event which, after notice, lapse of time or both, would result in any such violation, conflict or default. Seller does not have any Subsidiaries.

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2.2 Authorization; No Conflict.

(a) Seller has full legal right and all requisite power and authority to execute and deliver each of the Transaction Documents to which it is a party and to perform its obligations and consummate the transactions contemplated thereby. The execution and delivery by Seller of each of the Transaction Documents to which it is a party, the performance of its obligations and the consummation of the transactions contemplated thereby have been duly and validly authorized by the Board of Directors of Seller and the Sole Shareholder, and all other necessary action on the part of Seller. This Agreement has been duly and validly executed and delivered by Seller and, assuming the due and valid execution hereof by Buyer, constitutes a valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar Laws from time to time in effect which affect creditors' rights generally, and by legal and equitable limitations on the enforceability of specific remedies. Each of the other Transaction Documents to which Seller is a party has been duly and validly executed and delivered by Seller or, when so executed and delivered, assuming the due and valid execution thereof by each other party thereto, will be duly and validly executed and delivered by Seller, enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar Laws from time to time in effect which affect creditors' rights generally, and by legal and equitable limitations on the enforceability of specific remedies.

(b) Except as set forth on Section 2.2(b) of the Seller Disclosure Schedule, the execution, delivery and performance of the Transaction Documents by Seller, and the consummation of the transactions contemplated thereby, do not and will not, with or without notice, lapse of time or both: (i) conflict with or result in a breach or violation of Seller's Charter Documents or any resolution of the Governing Body or equity holders or members (or comparable Persons) of Seller; (ii) require on the part of Seller any consent, waiver, approval, declaration or authorization of, or notice to or filing with, any Governmental Authority; (iii) materially conflict with, result in a material default, material modification or termination under, give any Person a right of termination, cancellation, acceleration, suspension or revocation under, result in the loss of a material benefit or the imposition of any material obligation under, or require any material consent, waiver, approval, notice, filing, declaration or authorization under, any Assigned Contract or Transferred Permit; (iv) result in the creation or imposition of any material Lien on the Business or any Acquired Asset other than Permitted Liens; or (v) violate in any material respect any Law to which Seller, the Business or any of the Acquired Assets is subject or bound.

2.3 Financial Statements.

(a) Attached to Section 2.3(a) of the Seller Disclosure Schedule are true, correct and complete copies of the following financial statements: (i) Seller's unaudited balance sheets, as of December 31, 2020 and December 31, 2019, and Seller's unaudited statements of operations, statements of changes in stockholder's deficit and statements of cash flows for the years then ended, respectively, and (ii) Seller's unaudited balance sheet as of March 31, 2021 (the "Base Balance Sheet", and such date, the "Most Recent Balance Sheet Date") and statements of operations, changes in stockholders' deficit and cash flows for the three month period ended March 31, 2021. The unaudited financial statements have been prepared from Seller's Books and Records and in accordance with U.S. GAAP applied on a consistent basis throughout the periods covered thereby, and fairly presents in all material respects the financial condition and results of operations of Seller and the Business as of the dates, and for the periods, indicated thereon, except that (x) the unaudited interim financial statements are subject to normal year-end adjustments, (y) the unaudited annual and interim financial statements do not contain footnote

disclosure and (z) as set forth on Section 2.3(a) of the Seller Disclosure Schedule. Since the Most Recent Balance Sheet Date, there have been no material changes in the accounting policies of Seller (including any change in depreciation or amortization policies or rates, or policies with respect to reserves for uncollectible accounts receivable or excess or obsolete inventory) and no revaluation of Seller's properties or assets.

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(b) Seller is not liable for or subject to any material Liability with respect to any of the Acquired Assets or the Business, except for (i) Liabilities reflected, reserved for or otherwise described on the Base Balance Sheet and not previously paid or discharged, (ii) Liabilities incurred since the Most Recent Balance Sheet Date in the Ordinary Course of Business, which Liabilities are not, individually or in the aggregate, material in amount or significance (and none of which arose from a breach of Contract or non-compliance with applicable Law), (iii) expressly contemplated by or under the Transaction Documents, or (iv) as set forth on Section 2.3(b) of the Seller Disclosure Schedule.

2.4 Absence of Changes. Except as set forth on Section 2.4 of the Seller Disclosure Schedule, since the Most Recent Balance Sheet Date, (a) Seller has conducted the Business in the Ordinary Course of Business, (b) there has not been any Seller Material Adverse Change and (c) there has not been any event, act or omission that, if such event, act or omission occurred following the execution of this Agreement, would have resulted in a breach of Section 4.1 of this Agreement (absent Buyer's consent).

2.5 Assets. Except as set forth on Section 2.5 of the Seller Disclosure Schedule, Seller has good and valid title to or a valid leasehold interest in, all of the Acquired Assets, free and clear of all Liens other than Permitted Liens. No material assets that are used in the Business are owned or used by any Affiliate of Seller. Upon execution and delivery by Seller to Buyer of the instruments of conveyance referred to in Section 1.4(a)(i), Buyer will receive good and valid title to or a valid leasehold interest in, the Acquired Assets, free and clear of all Liens other than Permitted Liens.

2.6 Taxes.

(a) Seller has paid on a timely basis all Taxes, whether or not shown on any Tax Return, that were due and payable with respect to the Business and the Acquired Assets.

(b) No examination or audit or other action of or relating to any Tax Return of Seller related to the Business and the Acquired Assets by any Governmental Authority is currently in progress or, to Seller's Knowledge, threatened or contemplated by any Governmental Authority. No material deficiencies for Taxes of Seller have been, or, to Seller's Knowledge, are expected by Seller to be, claimed, proposed or assessed by any Governmental Authority with respect to Taxes related to the Business and the Acquired Assets.

(c) There are no Liens with respect to Taxes upon any of the Acquired Assets, other than with respect to Taxes not yet due and payable.

(d) Seller is not a member of an affiliated group that files a consolidated federal income tax return pursuant to Section 1502 of the Code and the Treasury Regulations promulgated thereunder.

(e) Seller has not taken or agreed to take any action and is not aware of the existence of any fact or circumstance, that could reasonably be expected to impede or prevent Buyer's acquisition of the Acquired Assets pursuant to this Agreement, taken together with the Seller Liquidation, from qualifying as a tax-free "reorganization" under Section 368(a)(1)(D) of the Code.

2.7 Employee Benefit Plans. With respect, as applicable, to Seller Benefit Plans and Seller Benefit Arrangements:

(a) Each Seller Benefit Plan and each Seller Benefit Arrangement has been maintained in all material respects in accordance with its constituent documents and with all applicable provisions of domestic and foreign Laws, including applicable federal and state securities Laws and any applicable reporting and disclosure requirements; and no act or omission has occurred and no condition exists with respect to any Seller Benefit Plan or Seller Benefit Arrangement that could reasonably be expected to subject Seller or Buyer to any material fine, penalty, tax or Liability of any kind (except for claims for benefits in the Ordinary Course of Business).

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(b) There are no pending claims (other than routine benefit claims and proceedings with respect to qualified domestic relations orders) or lawsuits that have been asserted or instituted by, against or relating to, any Seller Benefit Plans or Seller Benefit Arrangements (including any such claim or lawsuit against any fiduciary of any such Seller Benefit Plan or Seller Benefit Arrangement), nor, to Seller's Knowledge, is there any reasonable basis for any such claim or lawsuit.

2.8 Labor Matters.

(a) Section 2.8(a) of the Seller Disclosure Schedule sets forth, as of the date hereof: (i) all employees of the Business; (ii) all officers, directors and managers of the Business; (iii) all employment agreements to which the Business is bound; and (iv) the annual compensation (and the portions thereof attributable to salary, bonus and other compensation, respectively) of each employee, officer, manager or director of the Business for 2020.

(b) To Seller's Knowledge, (i) since December 31, 2018, Seller has not, with respect to any employee of the Business, breached or violated in any material respect (A) any applicable Law respecting employment and employment practices, terms and conditions of employment and wages and hours, including any such Law respecting employment discrimination, employee classification, workers' compensation, family and medical leave, the Immigration Reform and Control Act and occupational safety and health requirements, or (B) any employment agreement, and (ii) no material claims, controversies, investigations, audits or suits are pending or, to Seller's

(c) Seller is not, nor since December 31, 2018 has it been, with respect to any employee of the Business, engaged in any material unfair labor practice or the subject of any material unfair labor practice complaint pending or, to Seller's Knowledge, threatened, before the National Labor Relations Board or any other comparable foreign or domestic authority or any workers' council.

(d) Seller is not, nor has it been since December 31, 2018, with respect to any employee of the Business, a party to or bound by any collective bargaining agreement, trade union agreement, works council, employee representative agreement or information or consultation agreement. Since December 31, 2018, there have been no labor unions or other organizations representing or, to Seller's Knowledge, purporting or attempting to represent any employee of the Business. To Seller's Knowledge, since December 31, 2018, no employee of the Business has attempted to organize a labor union or other organization to represent any employee of the Business. Since December 31, 2018, no material strike, slowdown, picketing, work stoppage, concerted refusal to work overtime or other similar labor activity with respect to any current employee of the Business has occurred or, to Seller's Knowledge, been threatened.

(e) Except as set forth on Section 2.8(e) of the Seller Disclosure Schedule, to Seller's Knowledge, all persons currently performing services for the Business while classified as independent contractors have, in all material respects, satisfied the requirements of Law to be so classified, and Seller has fully and accurately reported compensation paid to them on IRS Forms 1099 or other applicable Tax forms for independent contractors when required to do so.

(f) All current and former employees and officers of the Business involved in the research or development of any material Seller Owned Intellectual Property have entered into confidentiality and assignment of inventions agreements in favor of Seller that remain in effect and that are freely assignable by Seller to Buyer. No employee of the Business, to Seller's Knowledge, is in violation of any term of any patent disclosure agreement, non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Business because of the nature of the business conducted by Seller or to the use of trade secrets or proprietary information of others.

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(g) Each employee of the Business working in a country other than one of which such employee is a national has a valid work permit or visa enabling him or her to work lawfully in the country in which such individual is employed.

(h) To Seller's Knowledge, since December 31, 2018, Seller has not breached or violated in any material respect any applicable non-U.S. Law concerning employer contributions to any trade union, housing, unemployment, retirement, bonus and welfare funds and all other funds to which an employer is required by non-U.S. Law to contribute.

2.9 Compliance with Law; Permits; Governmental Consents

(a) Except as set forth on Section 2.9(a) of the Seller Disclosure Schedule, since December 31, 2015, Seller has conducted and is conducting the Business in compliance in all material respects with all applicable Laws. Except as set forth in Section 2.9(a) of the Seller Disclosure Schedule, to Seller's Knowledge, since December 31, 2015, Seller has not received any written communication from any Governmental Authority or private party alleging material noncompliance with any applicable Law with respect to the Business or any Acquired Asset. With respect to the Business, since December 31, 2015, Seller has not conducted any internal investigation with respect to any actual, potential or alleged violation in any material respect of any Law by any manager, member or other equity holder, officer or employee of Seller or concerning actual or alleged fraud. The WARN Act is inapplicable to Seller given Seller's current number of employees.

(b) Seller owns or holds all Transferred Permits required to conduct the Business as presently conducted. Section 2.9(b) of the Seller Disclosure Schedule sets forth a true, correct and complete list of all Transferred Permits. All fees required to have been paid in connection with the Transferred Permits have been paid. The Transferred Permits are valid and subsisting, and no Governmental Authority intends to modify, limit, cancel, terminate or not renew any Transferred Permit. No Person other than Seller owns or has any proprietary, financial or other interest (direct or indirect) in any of the Transferred Permits. Seller has conducted and is conducting the Business in compliance in all material respects with the requirements, standards, criteria and conditions set forth in the Transferred Permits. Subject to the approval of the applicable Governmental Authorities, as well as the filing of the Seller FDA Letter and the Buyer FDA Letter with the FDA, all Transferred Permits are freely transferrable to Buyer at the Closing, will be transferred to Buyer at the Closing and will be in full force and effect as of the Closing. Seller has made available to Buyer true, complete and correct copies of all Transferred Permits.

(c) Seller is in compliance in all material respects with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., the Organization for Economic Cooperation and Development Convention Against Bribery of Foreign Public Officials in International Business Transactions and legislation implementing such convention, all other international anti-bribery conventions and all applicable anti-corruption or bribery Laws in any jurisdiction in which Seller has conducted the Business (collectively, "Anti-Bribery Laws"). Seller has not received any written communication from any Governmental Authority that alleges that Seller, or, to Seller's Knowledge, any current or former Representative thereof, is or may be in violation of, or has, or may have, any liability under, any Anti-Bribery Laws, and no such potential violation of Anti-Bribery Laws has been discovered by or brought to the attention of Seller. Seller has not made nor does it anticipate making any disclosures to any Governmental Authority for potential violations of Anti-Bribery Laws. To Seller's Knowledge, none of Seller's current or former Representatives is currently an officer, agent or employee of a Governmental Authority. Neither Seller nor, to Seller's Knowledge, any of its current or former Representatives has directly or indirectly, offered, given, reimbursed, paid or promised to pay, or authorized the payment of, any money or other thing of value (including any fee, gift, sample, travel expense or entertainment) or any commission payment payable to (a) any Person who is an official, officer, agent, employee or representative of any Governmental Authority or of any existing or prospective customer (whether or not owned by a Governmental Authority), (b) any political party or official thereof, (c) any candidate for political or political party office or (d) any other Person affiliated with any such customer, political party or official or political office, in each case while knowing or having reason to believe that all or any portion of such money or thing of value would be offered, given, reimbursed, paid or promised, directly or indirectly, for purposes not allowable under the Anti-Bribery Laws, to any such official, officer, agent, employee, representative, political party, political party official, candidate, individual, or other Person affiliated with any such customer, political party or official or political office.

2.10 Legal Proceedings. Except as set forth on Section 2.10 of the Seller Disclosure Schedule, there is no, and during the last five (5) years there has been no, pending or, to Seller's Knowledge, threatened material Legal Proceeding with respect to, against or affecting the Business or any Acquired Assets, or any current or former officer, director or employee of Seller in its, his or her capacity as such or with respect to the Business or any Acquired Asset, or seeking to prevent or delay the transactions contemplated hereby, and, to Seller's Knowledge, no notice of any material Legal Proceeding, whether pending or threatened, has been received by Seller. There are no material judgments, orders, injunctions, decrees, stipulations or awards (whether rendered by a court, administrative agency or other Governmental Authority, by arbitration or otherwise) against or involving the Business or any Acquired Asset. There is no action, suit or proceeding by Seller pending, or which Seller has commenced preparations to initiate, against any other Person, related to the Business of the Acquired Assets.

2.11 Contracts and Commitments.

(a) Section 2.11(a) of the Seller Disclosure Schedule sets forth a true, correct and complete list of each Assigned Contract existing as of the date of this Agreement. Other than the Assigned Contracts set forth on Section 2.11(a) of the Seller Disclosure Schedule, Seller is not a party to any material Contract that is primarily related to the Products, the Business or the Acquired Assets. Seller has delivered to or made available to Buyer true and complete copies of each Assigned Contract. Section 2.11(a) of the Seller Disclosure Schedule sets forth, as of the date hereof, each Assigned Contract that contains any non-competition, non-solicitation, exclusivity or "most favored nation" provision that restricts Seller (or, following the Closing, would restrict Buyer) in relation to the Business, the use of the Acquired Assets, operations in any geographic location, or the manufacture, use, development, promotion, marketing, sale, offer to sell or distribution of the Products to any customer or potential customer.

(b) Each Assigned Contract is in full force and effect and is a legal, valid, binding and enforceable obligation of Seller and, to Seller's Knowledge, each of the other parties thereto, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar Laws from time to time in effect which affect creditors' rights generally, and by legal and equitable limitations on the enforceability of specific remedies. Except for violations, breaches or defaults which have been cured and for which Seller does not have any material Liability, neither Seller nor, to Seller's Knowledge, any other party to any Assigned Contract, has breached or defaulted under, or has improperly terminated, revoked or accelerated, any Assigned Contract, and there exists no condition or event which, after notice, lapse of time or both, would constitute any such breach, default, termination, revocation or acceleration. Seller has not received notice of material default under any Assigned Contract.

(c) Except for the Assigned Contracts and as set forth on Section 2.11(c) of the Seller Disclosure Schedule, as of the date hereof, Seller is not a party to any material Contract, transaction or other arrangement with respect to the Business or the Acquired Assets with any current or former officers, directors, stockholders, employees or Affiliates of Seller or, to Seller's Knowledge, any current or former Affiliate of any such Persons.

2.12 Intellectual Property.

(a) Seller Registrations. Section 2.12(a) of the Seller Disclosure Schedule sets forth a true, correct and complete list of all Intellectual Property Registrations primarily used in, intended to be primarily used in or otherwise primarily related to the Business that are registered or filed in the name of Seller, alone or jointly with others (the "Seller Registrations"), in each case, enumerating specifically the applicable filing or registration number, title, jurisdiction in which filing was made or from which registration issued, date of filing, date of issuance and names of all current applicant(s) and registered owner(s), as applicable. All assignments of Intellectual Property Registrations to Seller have been properly executed and recorded to the extent required in the applicable jurisdiction under applicable Law. Seller is the owner of record of all Intellectual Property Registrations. To Seller's Knowledge, all Seller Registrations are valid and enforceable and all issuance, renewal, maintenance and other payments for each jurisdiction in which such Seller Registrations have been issued or are pending have been timely paid.

(b) Prosecution Matters. There are no inventorship challenges, or opposition, reexamination, nullity or interference proceedings commenced or, to Seller's Knowledge, threatened in writing, with respect to any Patent Rights included in the Seller Registrations. To Seller's Knowledge, Seller has complied with all of its obligations and duties to the respective patent offices, including the duty of candor and disclosure to the U.S. Patent and Trademark Office, with respect to all patent and trademark applications filed by or on behalf of Seller.

(c) Ownership and Sufficiency. Except as set forth on Section 2.12(c) of the Seller Disclosure Schedule, each material item of Seller Intellectual Property will, immediately following the Closing, be owned, or available for use (under a Seller Inbound IP License), by Buyer on substantially identical terms and conditions as it was to Seller immediately prior to the Closing, without restriction and without payment of any kind to any Third Party (other than amounts that would have been payable by Seller even if the transactions contemplated hereby did not occur). Seller is the owner of all right, title and interest in, to and under the Seller Owned Intellectual Property, free and clear of any Liens other than Permitted Liens. A true, complete and correct list of all Products is set forth in Section 2.12(c) of the Seller Disclosure Schedule.

(d) Protection Measures. Seller has taken reasonable measures to maintain in confidence all trade secrets and confidential information in Seller's possession, custody or control. Seller in the past three (3) years has complied in all material respects with all contractual and legal requirements pertaining to information privacy and security. To Seller's Knowledge, there has been no: (i) unauthorized disclosure of any material Third Party proprietary or confidential information or trade secrets in the possession, custody or control of Seller, or (ii) material breach of Seller's security procedures wherein any such confidential information or trade secrets have been disclosed to a Third Party.

(e) Infringement by Seller. Except as set forth on Section 2.12(e) of the Seller Disclosure Schedule, no material Legal Proceedings are pending or, to Seller's Knowledge, threatened in writing, against Seller alleging that the past or current Exploitation of the

Products by Seller in the Territory or any other activity of Seller in the Territory with respect to the conduct of the Business has infringed or violated, or constituted a misappropriation of, any material Intellectual Property right of any Third Party. In the past six (6) years, none of Seller's past or current Exploitation of any Products by Seller, or any other activity undertaken by it with respect to the conduct of the Business infringes or violates, or constitutes a misappropriation of, in any material respect, any Intellectual Property rights of any Third Party.

(f) Infringement of Seller Rights. To Seller's Knowledge, no Person (including any current or former employee or consultant of Seller) is infringing, violating or misappropriating, in any materials respect, (i) any of the Seller Owned Intellectual Property or (ii) any Seller Licensed Intellectual Property.

(g) Outbound IP Licenses. Section 2.12(g) of the Seller Disclosure Schedule sets forth a true, correct and complete list of all Seller Outbound IP Licenses. None of the Seller Outbound IP Licenses grants any exclusive rights to Third Parties in any Seller Intellectual Property. Except as set forth on Section 2.12(g) of the Seller Disclosure Schedule, Seller has not agreed to indemnify any Person against any infringement, violation or misappropriation of any Intellectual Property rights with respect to any Seller Outbound IP Licenses. Seller 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 to any Person.

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(h) Seller Inbound IP Licenses. Section 2.12(h) of the Seller Disclosure Schedule sets forth a true, correct and complete list of all Seller Inbound IP Licenses.

2.13 Insurance. Section 2.13 of the Seller Disclosure Schedule sets forth a true, correct and complete list of all insurance policies carried by Seller that are currently in effect for the benefit of the Business or any Acquired Asset (the "Insurance Policies"), the amounts and types of insurance coverage available thereunder and all insurance loss runs and workers' compensation claims received for the past three (3) policy years. Seller has made available to Buyer true, complete and correct copies of all Insurance Policies. Each such Insurance Policy (i) is legal, valid, binding and enforceable in accordance with its terms and, except for Insurance Policies that have expired under their terms in the Ordinary Course of Business, is in full force and effect and (ii) is occurrence based. Seller is not in breach or default (including any breach or default with respect to the giving of notice), and no event has occurred which, after notice or the lapse of time or both, would constitute a breach or default or permit termination or modification under such Insurance Policy. All premiums payable under all such Insurance Policies have been timely paid, and Seller is in compliance in all material respects with the terms of such Insurance Policies. To Seller's Knowledge, there have been no threatened terminations of, or material premium increases with respect to, any such Insurance Policies.

2.14 Inventory. All Inventories of the Products are set forth on Section 2.14 of the Seller Disclosure Schedule. To Seller's Knowledge, (a) each such Inventory complies in all material respects with all applicable specifications and all applicable Law, including cGMP, (b) is not, in any material respect, adulterated or misbranded within the meaning of the FDCA, and (c) its shelf life has not expired.

2.15 Regulatory Matters.

(a) Seller is developing, researching, testing, labeling, packaging, manufacturing, using, marketing, distributing, transporting, importing, exporting and storing, and at all times since Seller acquired its rights in the Products, has developed, researched, tested, labeled, packaged, manufactured, used, marketed, distributed, transported, imported, exported and stored the Products in compliance in all material respects with (i) the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 et seq. (the "FDCA") and applicable implementing regulations and guidances issued by the FDA, including, as applicable, those requirements relating to the FDA's cGMP and quality system practices, Good Laboratory Practices, Good Clinical Practices and investigational use, (ii) as and to the extent applicable, the medicinal products laws of the European Union and applicable implementing regulations and guidelines issued by applicable Governmental Authorities in the European Union, including the European Medicines Agency, and (iii) all other applicable Laws.

(b) All preclinical studies and clinical trials and other studies and tests of the Products conducted by or on behalf of Seller have been, and if still pending are being, conducted in material compliance, to the extent applicable, with the applicable protocol for such study or trial, Good Laboratory Practices, Good Clinical Practices and all applicable Laws, including the FDCA, the Animal Welfare Act, and the respective counterparts thereof outside the United States. Except as set forth in Section 2.15(b) of the Seller Disclosure Schedule, no clinical trial conducted by or on behalf of Seller has been terminated or suspended prior to scheduled completion, and neither the FDA nor any other applicable Governmental Authority, institution or clinical investigator that has participated or is participating in, or institutional review board that has or has had jurisdiction over, a clinical trial conducted by or on behalf of Seller has initiated, or, to Seller's Knowledge, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, restrict, or suspend any proposed or ongoing clinical investigation of any Product conducted or proposed to be conducted by or on behalf of Seller.

(c) Neither the Seller, nor, to Seller's Knowledge, any of its officers, directors, managers, employees, or contractors, nor any clinical investigator who has conducted or, if still pending, is conducting any nonclinical study or clinical trial sponsored by or on behalf of Seller in connection with any of the Products has been disqualified or debarred by the FDA or any other Governmental Authority, has received any written notice from the FDA or any other Governmental Authority of an intent to initiate such disqualification proceedings or disbarment, or, to Seller's knowledge, has been convicted of any crime or engaged in any conduct that could result in such disqualification or debarment.

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(d) All documents filed by Seller with the FDA or any other Governmental Authority with respect to any of the Products, including the manufacturing, handling, storage or shipment of any of the Products, were at the time of filing true, complete and accurate in all material respects, and no adverse event information has come to the attention of Seller that is materially different in terms of the incidence, severity or nature of such adverse events than any which were filed as safety updates to the documents filed by Seller with the

(e) Seller either owns or has full rights of access to and possession of all scientific data, results and findings, including laboratory and clinical data and raw data created by Seller, its Licensors or any Third Party on behalf of Seller or any Licensor with respect to the Products.

(f) Except as set forth in Section 2.15(f) of the Seller Disclosure Schedule, Seller has not received any notice of and has not been subject to FDA regulatory actions against Seller, its Licensors, or any contractor acting on behalf of Seller or its Licensors with respect to any of the Products, including notice of adverse findings, untitled or warning letters, mandatory recalls, non-routine investigation or audit, request for information, or any other notice from any other Governmental Authority alleging or asserting material noncompliance with the FDCA or any other applicable Law. Seller has not received an FDA Form 483 or notice of inspectional observations from any other Governmental Authority related to or affecting any of the Products, which has not been closed out by the FDA or relevant Governmental Authority.

(g) All manufacturing operations conducted by or on behalf of Seller with respect to the Products have been and are being conducted in material compliance with applicable Laws, including, to the extent applicable, 21 U.S.C. § 351(a)(2)(B) and cGMP. Seller has maintained documentation demonstrating that the Inventories included in the Acquired Assets were manufactured in accordance with applicable specifications for each Product. No Product has been voluntarily recalled or discontinued by the Seller at the request of the FDA or other Governmental Authority, nor has Seller received any notice from FDA or any other Governmental Authority that it has commenced or threatened to initiate any action to enjoin or restrict the production of the Products.

(h) Seller has not received written notice of any pending or threatened claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action from the FDA or any other Governmental Authority alleging that any operation or activity by Seller with respect to the Products in the Territory is in material violation of the FDCA or similar applicable Laws promulgated by applicable state Governmental Authorities or Governmental Authorities outside the United States. No civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, notice, demand letter, inquiry, proceeding or request for information is pending or, to Seller's Knowledge, threatened against Seller with respect to any of the Products, and Seller has no liability (whether actual or contingent) for failure to comply with the FDCA or other applicable Laws.

(i) Neither the Seller, nor, to Seller's Knowledge, any of its officers, directors, managers, employees, or contractors, has committed any act, made any statement or failed to make any statement with respect to any of the Products that would reasonably be expected to provide a basis for the FDA or any other Governmental Authority to invoke its policy with respect to "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" or any similar policies set forth in any applicable Laws. Neither Seller nor, to Seller's Knowledge, any of Seller's officers, employees or agents, has been convicted of any crime or engaged in any conduct with respect to any of the Products that has resulted, or would reasonably be expected to result, in debarment or exclusion under applicable Law, including 21 U.S.C. § 335a. To Seller's Knowledge, no claims, actions, proceedings or investigations with respect to any of the Products that would reasonably be expected to result in debarment or exclusion of Seller are pending or threatened against Seller or any of its officers, employees or agents.

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(j) Neither Seller nor, to Seller's Knowledge, any officer, employee or agent of Seller has been convicted of any crime or engaged in any conduct with respect to any of the Products for which such Person or entity could be excluded from participating in the Federal health care programs under Section 1128 of the Social Security Act of 1935, as amended, or any similar Laws. Seller is not a party to any corporate integrity agreement, monitoring agreement, consent decree, settlement order, or similar agreement with or imposed by any Governmental Authority with respect to any of the Products.

(k) To Seller's Knowledge, except as set forth in Section 2.15(k) of the Seller Disclosure Schedule, there are no material investigations, adverse third party allegations or actions, or claims against Seller, including any pending or threatened action against Seller, in any court or by or before any Governmental Authority, with respect to any of the Products, or Seller's obligations set forth herein, including any which may adversely affect Seller's ability to perform its obligations under this Agreement. Seller is not subject to any investigation related to any of the Products that is pending and of which Seller has been notified in writing or, to Seller's Knowledge, which has been threatened, in each case by (i) the FDA or (ii) the Department of Health and Human Services Office of Inspector General or Department of Justice pursuant to the Federal Healthcare Program Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) or the Federal False Claims Act (31 U.S.C. §3729).

2.16 Affiliate Transactions. Except as set forth in Section 2.16 of the Seller Disclosure Schedule, other than in his or her capacity as a director, officer or employee of Seller or a direct or indirect equityholder of Seller, no Affiliate of Seller (a) has or has had any interest or ownership in any Acquired Asset or any material asset, right or property (tangible or intangible) related to any of the Products or (b) has any claim or cause of action against Seller related to any Acquired Asset or any of the Products.

2.17 Brokers and Agents. No broker or finder has acted for Seller in connection with the Transaction Documents or the transactions contemplated thereby, and no broker or finder is entitled to any brokerage or finder's fee or other commissions in respect of such transactions based upon agreements, arrangements or understandings made by or on behalf of Seller.

2.18 Purchase for Own Account; Sophistication. Seller acknowledges and agrees that the shares of Buyer Common Stock to be acquired by Seller pursuant to this Agreement will be acquired for investment for Seller's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that Seller has no present intention of selling, granting any participation in, or otherwise distributing the same. Seller acknowledges and agrees that Seller does not presently have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person or to any Third Party, with respect to any of the shares of Buyer Common Stock to be received by it pursuant to this Agreement. Seller represents and warrants that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of owning the shares of Buyer Common Stock to be received by it pursuant to this Agreement. Seller has the ability to bear the economic risk of the investment in shares of Buyer Common Stock, including complete loss of such investment. Notwithstanding the foregoing, following the Closing, Seller intends to liquidate and wind-up its affairs and distribute the shares of Buyer Common Stock to be acquired by Seller pursuant to this

Agreement to the Sole Shareholder and/or the equity holders of the Sole Shareholder or their Affiliates, in each case, in accordance with the applicable distribution provisions set forth in the Charter Documents of Seller and the Sole Shareholder and applicable Laws, including applicable securities Laws.

2.19 Access to Information. Seller acknowledges that (a) it has been afforded (i) access to information about Buyer and its financial conditions, results of operations, businesses, properties and prospects sufficient to enable Seller to evaluate its investment in the Buyer Common Stock; and (ii) the opportunity to obtain such additional information that Buyer possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment in the Buyer Common Stock and any such additional information has been provided to Seller's reasonable satisfaction, and (b) it has sought such professional advice as it has considered necessary to make an informed decision with respect to its acquisition of the Buyer Common Stock.

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2.20 Restricted Securities; Legends.

(a) Seller understands that the shares of Buyer Common Stock to be received by it in connection with the transactions contemplated by this Agreement have not been 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 Seller's representations and warranties as expressed herein. Seller understands that such shares of Buyer Common Stock will be "restricted securities" under applicable securities Laws and that, pursuant to these Laws, Seller must hold such shares indefinitely unless they are registered with the SEC and qualified by state authorities, or an exemption from such registration and qualification requirements is available.

(b) Seller understands that the shares of Buyer Common Stock to be received by it in connection with the transactions contemplated by this Agreement may be notated with one or more of the following legends (collectively, the "Restrictive Legends"):

(i) "THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED"; and

(ii) any legend required by applicable securities Laws to the extent such Laws are applicable to the shares represented by the certificate, instrument, or book entry so legended.

2.21 Accredited Investor. Seller, the Sole Shareholder and each of the equity holders of the Sole Shareholder (or any of their Affiliates) that may receive a distribution of shares of Buyer Common Stock from Seller and/or the Sole Shareholder is an "accredited investor" (as defined in Regulation D promulgated under the Securities Act).

2.22 No Other Representations or Warranties. Except as expressly provided in this Agreement and the Transaction Documents, Seller does not make any representation or warranty, express or implied, oral or written, about the Products, the Acquired Assets, the Assumed Liabilities or the Business, whatsoever. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND THE TRANSACTION DOCUMENTS, (A) THE ACQUIRED ASSETS ARE BEING TRANSFERRED "AS IS", (B) SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR AS BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND (C) SELLER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES WITH RESPECT TO THE ACQUIRED ASSETS, INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF NONINFRINGEMENT.

2.23 Non-Reliance. Seller acknowledges, agrees, represents and warrants that neither Buyer, nor any of its agents or representatives, nor any other Person acting on behalf of or in concert with Buyer, has made or provided any representations, warranties, facts or information of any kind or nature, express or implied, oral or written, relating to Buyer or to its future or historical financial condition, performance, results, operations, assets, liabilities or prospects, or otherwise relating in any way to the subject matter of this Agreement, except as specifically set forth in Article III. Seller also acknowledges, agrees, represents and warrants that it is not relying, and has not relied, on any representations, warranties, facts or information whatsoever except as specifically set forth in Article III, in its decision to enter into this Agreement and to proceed with the transactions contemplated by this Agreement.

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ARTICLE III REPRESENTATIONS AND WARRANTIES OF BUYER

To induce Seller to enter into the Transactions Documents and consummate the transactions contemplated thereby, Buyer hereby makes the following representations and warranties to Seller, as of the date of this Agreement, except as disclosed in the Buyer SEC Reports (but excluding any predictive, cautionary or forward-looking disclosures contained under the caption "Risk Factors", "Forward Looking Statements" or any similar predictive, cautionary or forward-looking statement) filed or furnished at least two (2) Business Days prior to the date of this Agreement, to the extent such Buyer SEC Reports are publicly available on the SEC's Electronic Data Gathering Analysis and Retrieval System, and any exhibits to such Buyer SEC Reports.

3.1 Due Organization. Buyer is a corporation duly organized, validly existing and in good standing (tax and otherwise) under the Laws of the State of Nevada. Buyer is in good standing (tax and otherwise) in each jurisdiction in which it is qualified to do business. Buyer has full corporate power and authority necessary to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. Buyer has delivered to Seller true, correct and complete copies of its Charter Documents. Buyer is not in violation of, in conflict with, or in default under its Charter Documents, and there exists no condition or event which, after notice, lapse of time or both, would result in any such violation conflict or default.

3.2 Authorization; No Conflict.

(a) Buyer has full legal right and all requisite corporate power and authority to execute and deliver each of the Transaction Documents to which it is a party and to perform its obligations and consummate the transactions contemplated thereby. The execution and delivery by Buyer of the Transaction Documents to which it is a party, the performance of its obligations and the consummation of the transactions contemplated thereby have been duly and validly authorized by all necessary action on the part of Buyer. This Agreement has been duly and validly executed and delivered by Buyer and, assuming the due and valid execution and delivery hereof by Seller, constitutes a valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar Laws from time to time in effect which affect creditors' rights generally, and by legal and equitable limitations on the enforceability of specific remedies. Each of the other Transaction Documents to which Buyer is a party has been duly and validly executed and delivered by Buyer or, when so executed and delivered, assuming the due and valid execution and delivery thereof by each other party thereto, will be duly and validly executed and delivered by Buyer, enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar Laws from time to time in effect which affect creditors' rights generally, and by legal and equitable limitations on the enforceability of specific remedies.

(b) The execution, delivery and performance of the Transaction Documents by Buyer, and the consummation of the transactions contemplated thereby, do not and will not, with or without notice, lapse of time or both: (i) conflict with or result in a breach or violation of Buyer's Charter Documents or any resolution of the Governing Body of Buyer; (ii) except for the Buyer Stockholder Approval, require on the part of Buyer any consent, waiver, approval, declaration or authorization of, or notice to or filing with, any Governmental Authority; (iii) materially conflict with, result in a material default, material modification or termination under, give any Person a right of termination, cancellation, acceleration, suspension or revocation under, result in the loss of a material benefit or the imposition of any material obligation under, or require any material consent, waiver, approval, notice, filing, declaration or authorization under, any Buyer Material Contract or Permit applicable to the Buyer Group, or (iv) violate in any material respect any Law to which the Buyer Group or its properties, rights or assets are subject or bound.

3.3 Sufficient Funds. Buyer has, and, at the Closing, will have, sufficient funds available as and when needed to consummate the transactions contemplated hereby and to perform its obligations hereunder.

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3.4 Capitalization. The authorized capital stock of Buyer consists of 800,000,000 shares of Buyer Common Stock and 10,000,000 shares of preferred stock. As of the close of business on the Business Day prior to the date of this Agreement, there were (a) 13,958,516 shares of Buyer Common Stock and no shares of preferred stock outstanding and (b) no shares of Buyer Common Stock or preferred stock held in treasury.

3.5 Buyer Common Stock. The shares of Buyer Common Stock subject to issuance pursuant to Article I of this Agreement have been reserved for issuance and, upon issuance on the terms and conditions specified herein, will be duly authorized, validly issued, fully paid and non-assessable, free and clear of all Liens (other than restrictions on transfer imposed under applicable securities Laws and restrictions on transfer thereof as provided for herein or Liens imposed as a result of any action or inaction of Seller), and not subject to or issued in violation of any applicable federal or state securities laws or any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the Nevada Revised Statutes, Buyer's Charter Documents or any agreement to which Buyer is a party or is otherwise bound. The shares of Buyer Common Stock subject to issuance pursuant to Article I shall have the rights, powers and preferences set forth in Buyer's Charter Documents, copies of which have been made available to Seller. Other than the shares of Buyer Common Stock subject to issuance pursuant to Article I of this Agreement and shares reserved for issuance upon the exercise of options or other equity awards pursuant to equity incentive plans of Buyer, there are no shares of Buyer Common Stock reserved for issuance. There are no capital appreciation rights, phantom stock plans, securities with participation rights or features or similar obligations and commitments of Buyer. As of the Closing Date, except for this Agreement and restrictions imposed by applicable Laws, there will be no voting trusts, stockholder agreements, proxies or other rights or agreements in effect with respect to the voting, transfer or dividend rights of the shares of Buyer Common Stock subject to issuance pursuant to Article I of this Agreement.

3.6 SEC Filings; Financial Statements; Absence of Changes

(a) Buyer has timely filed all registration statements, forms, reports, schedules, prospectuses, proxy statements, certifications and other documents required to be filed by Buyer with the SEC in the past twenty-four (24) months. All such registration statements, forms, reports and other documents (including those that Buyer may file after the date hereof until the Closing and together with all exhibits and schedules thereto and documents incorporated by reference therein) are referred to herein as the "Buyer SEC Reports." All of the Buyer SEC Reports (i) were or will be filed on a timely basis, (ii) at the time filed, complied, or will comply when filed, as to form in all material respects with the requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act of 2002, and rules and regulations promulgated thereunder applicable to such Buyer SEC Reports and (iii) did not, or will not, at the time they were or are filed (or, if amended, as of the date of such amendment) contain any untrue statement of a material fact or omit to state a material fact required to be stated in such Buyer SEC Reports or necessary in order to make the statements in such Buyer SEC Reports, in the light of the circumstances under which they were made, not misleading.

(b) Since the date of Buyer's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q through the date hereof, (a) Buyer has conducted its business in the Ordinary Course of Business and (b) there has not been any Buyer Material Adverse Change.

3.7 Listing; Investment Company. The Buyer Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and Buyer has not received any written notification that the SEC is contemplating terminating such registration. Buyer has not, in the past twenty-four (24) months, received written notice from the Nasdaq Stock Market to the effect that Buyer is not in compliance with the listing or maintenance requirements of such market or exchange. Buyer is not, and immediately after the Closing will not be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

3.8 Taxes. Buyer and each of its Subsidiaries has properly filed on a timely basis all material Tax Returns required to be filed by Buyer

and its Subsidiaries, and all such Tax Returns are true, correct and complete in all material respects and were prepared in compliance in all material respects with all applicable Laws and regulations. Buyer and each of its Subsidiaries has paid on a timely basis all Taxes, whether or not shown on any Tax Return, that were due and payable. Buyer (and any of its Affiliates) has not taken or agreed to take any action, and is not aware of the existence of any fact or circumstance, that could reasonably be expected to impede or prevent the acquisition of the Acquired Assets pursuant to this Agreement, taken together with the Seller Liquidation, from qualifying as a tax-free "reorganization" under Section 368(a)(1)(D) of the Code.

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3.9 Compliance with Law. Each member of the Buyer Group and their respective predecessors have conducted in the past twenty-four (24) months, and are conducting, their business in compliance in all material respects with all applicable Laws. During the twenty-four (24) months preceding the date hereof, no member of the Buyer Group has received any written communication (or, to Buyer's Knowledge, any other communication) from any Governmental Authority or private party alleging material noncompliance with any applicable Law with respect to the Buyer's business.

3.10 Unlawful Payments. The Buyer Group is in compliance in all material respects with the Anti-Bribery Laws.

3.11 Legal Proceedings. There is no pending or, to Buyer's Knowledge, threatened material Legal Proceeding with respect to, against or affecting Buyer's business, or any current or former officer, director or employee of any member of the Buyer Group in its, his or her capacity as such, or seeking to prevent or delay the transactions contemplated hereby, and no notice of any material Legal Proceeding, whether pending or threatened, has been received by any member of the Buyer Group. There are no material judgments, orders, injunctions, decrees, stipulations or awards (whether rendered by a court, administrative agency or other Governmental Authority, by arbitration or otherwise) against or involving Buyer's business.

3.12 Contracts and Commitments. Each Contract to which a member of the Buyer Group is a party that is required to be disclosed in the Buyer SEC Reports pursuant to Item 601 of Regulation S-K under the Securities Act (each a "Buyer Material Contract") has been timely disclosed and attached as an exhibit to the Buyer SEC Reports. Other than as disclosed in the Buyer SEC Reports, each Buyer Material Contract is in full force and effect and is a legal, valid, binding and enforceable obligation of a member of the Buyer Group and, to Buyer's Knowledge, each of the other parties thereto, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar Laws from time to time in effect which affect creditors' rights generally, and by legal and equitable limitations on the enforceability of specific remedies.

3.13 Brokers and Agents. No broker or finder has acted for any member of the Buyer Group in connection with the Transaction Documents or the transactions contemplated thereby, and no broker or finder is entitled to any brokerage or finder's fee or other commissions in respect of such transactions based upon agreements, arrangements or understandings made by or on behalf of any member of the Buyer Group, in each case except for circumstances where Seller would not incur any liability.

3.14 Information Statement Disclosure. The information included in the Information Statement will not, as of the date of the Information Statement, (a) contain any statement that is inaccurate or misleading with respect to any material facts or (b) omit to state any material fact necessary in order to make such information, in the light of the circumstances under which such information will be provided, not false or misleading (it being understood that the representations and warranties set forth in this Section 3.14 shall not apply to any information supplied by Seller for inclusion in the Information Statement).

3.15 No Other Representations or Warranties. Except as expressly provided in this Agreement and the Transaction Documents, Buyer does not make any representation or warranty, express or implied, oral or written, about the Buyer Common Stock, whatsoever. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND THE TRANSACTION DOCUMENTS, (A) BUYER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OR AS BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND (B) BUYER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF NONINFRINGEMENT.

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3.16 Non-Reliance. Buyer acknowledges, agrees, represents and warrants that neither Seller, nor any of its agents or representatives, nor any other Person acting on behalf of or in concert with Seller, has made or provided any representations, warranties, facts or information of any kind or nature, express or implied, oral or written, relating to Seller, the Products, the Acquired Assets or the Business or to its future or historical financial condition, performance, results, operations, assets, liabilities or prospects, or otherwise relating in any way to the subject matter of this Agreement, except as specifically set forth in Article II. Buyer also acknowledges, agrees, represents and warrants that it is not relying, and has not relied, on any representations, warranties, facts or information whatsoever except as specifically set forth in Article II, in its decision to enter into this Agreement and to proceed with the transactions contemplated by this Agreement.

ARTICLE IV PRE-CLOSING COVENANTS

4.1 Conduct of Seller Business Pending Closing. Between the date of this Agreement and the earlier to occur of the Closing and the termination of this Agreement in accordance with Article VII (the "Interim Period") (except as (A) set forth in Section 4.1 of the Seller Disclosure Schedule, (B) contemplated by this Agreement or (C) expressly consented to in writing by Buyer, which consent shall not be unreasonably withheld, delayed or conditioned), Seller shall (x) conduct the Business in the Ordinary Course of Business, (y) use reasonable best efforts to maintain and preserve the Business and its organization intact, retain its present officers and employees and maintain and preserve its relationships with its officers and employees, suppliers, vendors, customers, licensors, licensees, distributors, regulatory authorities, creditors and others having business relations with it, and (z) maintain the tangible Acquired Assets, including those held under leases, in good working order and condition, ordinary wear and tear excepted. Notwithstanding the foregoing or any other provision of the Transaction Documents, during the Interim Period (except as (A) set forth in Section 4.1 of the Seller Disclosure Schedule, (B) contemplated

by this Agreement or (C) expressly consented to in writing by the Board of Directors of Buyer, which consent shall not be unreasonably withheld, delayed or conditioned), Seller shall not:

- (a) make or agree to make any expenditures in excess of \$50,000 individually or \$100,000 in the aggregate;
- (b) sell, assign, lease, sublease, license, sublicense, pledge or otherwise transfer or dispose of or grant any option or rights in, to or under, any Acquired Assets, other than the manufacture, packaging, labeling, shipment, transport, or distribution of Inventory;
- (c) waive or release any material right, or cancel, compromise, release or assign any material obligations owed to Seller, related to or arising under the Acquired Assets;
- (d) amend, modify or waive any material right of Seller under or terminate or enter into any Assigned Contract, or amend, modify or waive any material right under any Transferred Permit;
- (e) fail to take commercially reasonable efforts to preserve and maintain all Transferred Permits required for the conduct of the Business in all material respects as currently conducted or the ownership and use of the Acquired Assets;
- (f) enter into any other material transaction, agreement or arrangement that is not negotiated at arm's length and that would constitute an Assigned Contract;
- (g) enter into any transaction with a direct or indirect equity holder of the Seller or any Affiliate thereof;
- (h) amend its Charter Documents;

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- (i) commence a lawsuit or settle any material claim or litigation that relates to an Acquired Asset, an Assumed Liability or the Business (other than a lawsuit or claim by or against Buyer with respect to this Agreement);
- (j) make any material change in accounting principles, other than as required by GAAP (or any interpretation thereof), including pursuant to standards, guidelines and interpretations of the Financial Accounting Standards Board or any similar organization;
- (k) revalue any of the Acquired Assets, including writing down or writing off the value of Inventory or writing off notes or accounts receivable other than in the Ordinary Course of Business;
- (l) effect any recapitalization, reclassification, stock split or similar change in capitalization or dissolve or liquidate Seller;
- (m) acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or Person or division thereof;
- (n) sell, lease or otherwise dispose of any of its assets, rights or properties that are used in the Business that have a value in excess of \$25,000 in the aggregate, except inventory and obsolete or excess equipment sold in the Ordinary Course of Business;
- (o) sell, assign, transfer, exclusively license, abandon or otherwise dispose of any of the Seller Intellectual Property;
- (p) issue, sell, grant or deliver Seller's equity securities, or issue, sell, grant or deliver any securities convertible into, or options with respect to, or warrants to purchase or rights to subscribe for, any such equity securities;
- (q) make any redemption or purchase of Seller's equity interests;
- (r) establish, adopt, terminate, supplement or amend in any material respect any Benefit Plan (or any plan that would be a Benefit Plan if adopted) except (A) as required pursuant to the terms of any Benefit Plan made available to Buyer prior to the date hereof or (B) in the Ordinary Course of Business;
- (s) (i) grant any material increase in compensation or benefits or grant or pay any material bonus, retention, change in control, severance, or similar benefits, or (ii) take any action to accelerate any material rights or benefits under any Benefit Plan, including any action to accelerate the vesting or funding or payment of any Benefit Plan;
- (t) incur or assume, guarantee, or become obligated with respect to any material Liability, or assume, guarantee or endorse or otherwise become responsible for, whether directly, contingently or otherwise, any material Liability of any Person, other than (i) instruments of Liability existing as of the date hereof, or (ii) other Liability in an aggregate amount not to exceed \$25,000;
- (u) subject any portion of the Acquired Assets to any Lien, except for Permitted Liens;
- (v) fail to maintain in full force and effect the Seller's material insurance policies in a form and amount consistent with past practices;
- (w) initiate any new or modify any ongoing preclinical study or clinical trial or other studies or tests of any of the Products other than in the Ordinary Course of Business or as required by the FDA or other applicable Governmental Authority or applicable Law; or
- (x) take, or agree (in writing or otherwise) to take, any of the actions described in this Section 4.1.

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4.2 Information.

(a) During the Interim Period, Seller shall, subject to applicable Laws, afford to the authorized Representatives of Buyer, upon reasonable request and during normal business hours, access to (i) all of the Acquired Assets and Product Books and Records and (ii) such additional financial and operating data and other information relating to the Business and the Acquired Assets as Buyer may from time to time reasonably request, including access upon reasonable request and during normal business hours to the employees of Seller.

(b) No later than twenty (20) days following the end of each calendar month prior to the Closing, Seller shall provide to Buyer the unaudited balance sheet of Seller as of the end of the most recently completed calendar month and the related unaudited statements of income and members' equity and cash flows for the period from the beginning of Seller's then-current fiscal year until the end of such month.

(c) Seller and Buyer acknowledge and agree that the Confidentiality Agreement remains in full force and effect and that information provided by Seller or any of Seller's Affiliates to Buyer, or by Buyer or any of Buyer's Affiliates to Seller, pursuant to this Agreement prior to the Closing shall be treated in accordance with the Confidentiality Agreement. If this Agreement is terminated prior to the Closing, the Confidentiality Agreement shall remain in full force and effect in accordance with its terms. If the Closing occurs, the Confidentiality Agreement, insofar as it covers information provided to Buyer or its Affiliates relating to the Business, shall terminate effective as of the Closing, but shall remain in effect insofar as it covers other information provided by or on behalf of Seller to Buyer thereunder and insofar as it imposes non-solicitation and standstill restrictions on Seller.

4.3 Exclusivity. During the Interim Period:

(a) Seller shall not and shall cause its Representatives and Affiliates not to, directly or indirectly: (i) initiate, solicit, encourage or otherwise knowingly facilitate any inquiry, proposal, offer or discussion with any party (other than Seller's Representatives, Buyer or its Representatives) concerning any Acquisition Transaction, (ii) except as may be required by applicable Law, furnish any non-public information concerning the Business (or any portion thereof) or the Acquired Assets to any Person (other than Seller's Representatives, Buyer and its Representatives) or (iii) engage in discussions or negotiations with any party (other than Seller's Representatives, Buyer and its Representatives) concerning any Acquisition Transaction.

(b) Seller shall, and shall cause its Representatives and Affiliates to, (i) immediately cease any discussions or negotiations of the nature described in Section 4.3(a) that were pending, (ii) immediately notify any party with which such discussions or negotiations were being held of such termination, (iii) immediately request in writing that all Persons to whom nonpublic information concerning Seller has been distributed on or prior to the date of this Agreement return or destroy such information to Seller as soon as possible, and (iv) refrain from entering into any Acquisition Transaction.

(c) Seller shall and shall cause its Representatives and Affiliates to: (i) promptly advise Buyer in writing of the receipt, directly or indirectly, of any inquiry, proposal or other materials, and of any discussions, negotiations or proposals relating to, an Acquisition Transaction received after the date hereof, (ii) promptly identify the offeror and (iii) promptly provide Buyer copies of all material correspondence (including any indications of interest) and proposed written agreements, arrangements or understandings with respect to any Acquisition Transaction (and a description of any proposed oral agreements with respect thereto). Seller shall promptly advise Buyer of all subsequent communications relating to such proposal.

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4.4 Notification of Certain Matters.

(a) Seller shall promptly (and, in any event, within two (2) Business Days) give notice to Buyer of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would or would be reasonably likely to cause any representation or warranty of Seller contained herein to be untrue or inaccurate in any material respect at any time at or prior to the Closing, or which would constitute a Seller Material Adverse Change, (ii) any event which would reasonably be expected to cause any of the conditions in Article VI not to be fulfilled, or (iii) any material failure of Seller to comply with or satisfy in a timely manner any covenant, condition or agreement to be complied with or satisfied by Seller hereunder.

(b) Buyer shall promptly (and, in any event, within two (2) Business Days) give notice to Seller of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would or would be reasonably likely to cause any representation or warranty of Buyer contained herein to be untrue or inaccurate in any material respect at any time at or prior to the Closing, or which would constitute a Buyer Material Adverse Change, (ii) any event which would reasonably be expected to cause any of the conditions in Article VI not to be fulfilled, or (iii) any material failure of Buyer to comply with or satisfy in a timely manner any covenant, condition or agreement to be complied with or satisfied by Buyer hereunder.

4.5 Cause Conditions to be Satisfied. Subject to Section 4.6, each party shall (a) use reasonable best efforts to cause each of the conditions set forth in Article VI to be satisfied at or prior to the Closing and (b) cooperate in filing all notices and obtaining all consents and approvals required in connection with the transactions contemplated by this Agreement.

4.6 Governmental Consents and Filing of Notices. Subject to the terms and conditions herein provided, each of the Seller and Buyer shall use reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws to consummate and make effective as promptly as practicable the transactions contemplated hereby (including (i) the satisfaction, but not waiver, of the closing conditions set forth in Article VI, (ii) obtaining consents of all Governmental Authorities or other Persons necessary to consummate the transactions contemplated hereby and (iii) the execution and delivery of such instruments, and the taking of such other actions, as the other party may reasonably require in order to carry out the intent of this Agreement).

4.7 Buyer Stockholder Approval.

(a) Immediately following the execution and delivery of this Agreement and in lieu of calling a meeting of Buyer's stockholders, Buyer shall (i) submit the Stockholder Written Consent, in the form attached hereto as Exhibit I (the "Stockholder Written Consent"), to Acuitas Group Holdings, LLC (the "Principal Stockholder") and (ii) use its reasonable best efforts to obtain the Stockholder Written Consent, duly executed by the Principal Stockholder and duly delivered to Buyer in accordance with the Nevada Revised Statutes, from the Principal Stockholder before 9:00 a.m. New York time, on the day immediately following the date of this Agreement. The Parties agree and acknowledge that the Stockholder Written Consent shall be void and of no further effect if this Agreement is terminated in accordance with the terms and conditions hereof.

(b) Within five (5) Business Days after the date of this Agreement, Buyer shall file with the SEC a preliminary information statement in accordance with Regulation 14C promulgated under of the Exchange Act (such preliminary information statement and any revised or definitive information statement, the "Information Statement") relating to the Buyer Stockholder Approval. Seller shall reasonably cooperate with Buyer in the preparation of the preliminary Information Statement, the definitive Information Statement and any amendments or supplements thereto and shall promptly furnish to Buyer the information relating to Seller required by the Exchange Act for inclusion therein. Prior to filing with the SEC, Buyer shall provide Seller and its counsel a reasonable opportunity to review and comment on the Information Statement and shall consider in good faith for inclusion in the Information Statement any comments made by Seller or its counsel that are provided in a timely manner. Buyer shall use reasonable best efforts to respond as promptly as practicable to any comments of the SEC with respect to the Information Statement and to cause the Information Statement in definitive form to be mailed to the holders of shares of Buyer Common Stock entitled thereto as promptly as reasonably practicable after (i) the tenth (10th) calendar day after the initial filing of the preliminary Information Statement with the SEC if by such date the SEC has not informed Buyer that it intends to review the Information Statement or (ii) if the SEC has, by the tenth (10th) calendar day after the filing of the initial preliminary Information Statement with the SEC, informed Buyer that it intends to review the Information Statement, the date on which the SEC confirms that it has no further comments on the Information Statement. Buyer shall notify Seller promptly of (and in any event no more than one (1) Business Day after) the receipt of any comments from the SEC or its staff and of any request by the SEC or its staff for any amendments or supplements to the preliminary Information Statement or the definitive Information Statement, and if required, Buyer shall mail to the holders of shares of Buyer Common Stock entitled thereto, as promptly as reasonably practicable, such amendment or supplement. Prior to filing with the SEC, Buyer shall provide Seller and its counsel a reasonable opportunity to review and comment on any such amendments or supplements to the Information Statement and shall reasonably consider in good faith for inclusion in any amendments or supplements any comments made by Seller or its counsel that are provided in a timely manner. If at any time prior to the Closing any event shall occur, or fact or information shall be discovered, that should be set forth in an amendment or supplement to the Information Statement so that such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, the Party that discovers such information shall as promptly as practicable notify the other Party hereto and Buyer shall prepare and file with the SEC such amendment or supplement, in consultation with and subject to review by Seller and its counsel as promptly as practicable and, to the extent required by Law, cause such amendment or supplement to be disseminated to the holders of shares of Buyer Common Stock entitled thereto. Notwithstanding the foregoing, in the event that this Agreement is terminated in accordance with the terms and conditions hereof, Buyer shall not be required, after the date of termination, to prepare, file and mail the Information Statement pursuant to this Section 4.7(b).

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4.8 Bulk Transfers Law. Each of Buyer and Seller hereby waives compliance with the provisions of the bulk transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement.

ARTICLE V OTHER COVENANTS

5.1 Cooperation in Litigation. In the event that a claim is asserted against any Party or any of its Subsidiaries or Affiliates with respect to any of the transactions contemplated hereby, the other Parties shall reasonably cooperate in the defense of such claim. Each Party shall reasonably consult with the other Parties regarding the defense of any proceedings or litigation relating to any of the transactions contemplated hereby.

5.2 Tax Matters.

(a) Any personal property or similar Taxes applicable to the Acquired Assets for a Straddle Period shall be paid by Buyer or Seller, as applicable, and such Taxes shall be apportioned on a pro rata basis between Seller and Buyer. The amount of such Taxes for a Straddle Period that relate to the Pre-Closing Tax Period shall be the amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of days in the Straddle Period (with the remaining amount of such Taxes for such Straddle Period allocable to the Post-Closing Tax Period). Seller shall pay Buyer an amount equal to any such Taxes payable by Buyer which are attributable to the Pre-Closing Tax Period, and Buyer shall pay Seller an amount equal to any such Taxes payable by Seller which are not attributable to the Pre-Closing Tax Period. Such payments shall be made on or prior to the Closing Date or, if later, on the date such Taxes are due (or thereafter, promptly after request by Buyer or Seller if such Taxes are not identified by Buyer or Seller on or prior to the Closing Date). All other Taxes (if any) for a Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date. Buyer shall prepare and file any Tax Return for a Straddle Period.

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(b) All transfer, sales, and use Taxes, deed excise stamps and similar charges related to the transfer of the Acquired Assets contemplated by this Agreement shall be borne equally by Buyer and Seller. Buyer will file all necessary Tax Returns and other documentation with respect to all such Taxes and, if required by applicable Law, Seller will, and will cause its Subsidiaries to, join in the execution of any such Tax Returns and other documentation.

(c) Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Acquired Assets (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Governmental Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Seller and Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving (i) the qualification of the transactions contemplated by this Agreement as a reorganization within the meaning of Section 368(a) of the Code, (ii) the Acquired Assets with respect to any Pre-Closing Tax Period, and (iii) any audit or proceeding relating to a Pre-Closing Tax Period for which Buyer (as transferee, successor or otherwise) is liable for the relevant Taxes. Buyer shall keep Seller reasonably informed of the status of any such Tax audit or proceeding (including providing Seller with copies of all written correspondence regarding such matter), and shall not settle any such proceedings without Seller's written consent (not to be unreasonably withheld or delayed).

(d) The Parties intend that Buyer's acquisition of the Acquired Assets pursuant to this Agreement, taken together with the Seller Liquidation, be treated, and each of them shall use its reasonable best efforts to cause the transactions to be treated, for federal income tax purposes as a "reorganization" under Section 368(a)(1)(D) of the Code, and each Party shall file all Tax Returns consistent with, and take no position inconsistent with, such treatment unless there is a determination within the meaning of Section 1313(a) of the Code that such transactions do not qualify as a reorganization described in Section 368(a)(1)(D) of the Code. No Party shall take any action, cause any action to be taken, fail to take any action or fail to cause any action to be taken (including any action or failure to act otherwise permitted by this Agreement) that would prevent Buyer's acquisition of the Acquired Assets pursuant to this Agreement, taken together with the Seller Liquidation, from being treated, and each of them shall use its reasonable best efforts to cause such transactions to be treated, for federal income tax purposes, as a "reorganization" under Section 368(a)(1)(D) of the Code.

(e) Consistent with the Seller Plan of Liquidation, as promptly as reasonably practicable after the Closing, Seller will distribute all of its assets (including the shares of Buyer Common Stock constituting the Initial Stock Consideration, other than money or other property in a reasonable amount to pay outstanding debts of Seller, to Seller's shareholders in pursuance of the liquidation of Seller (the "Seller Liquidation").

(f) The Parties hereby adopt this Agreement as a "plan of reorganization" within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a).

5.3 Non-Solicitation and Confidentiality.

(a) Prohibited Activities. As further consideration for the purchase and sale of the Acquired Assets and the other transactions contemplated hereby, Seller covenants and agrees with Buyer that it shall not, and shall cause its Affiliates not to, until the fifth (5th) anniversary of the Closing Date (the "Non-Solicitation Term"), directly or indirectly, for such Person or on behalf of or in conjunction with any other Person, (A) employ or hire away from Buyer any Restricted Person or (B) solicit or communicate with any Restricted Person for the purpose or with the intent of enticing, or in a manner reasonably likely to entice, such Restricted Person away from Buyer; provided that this Section 5.3(a) shall not at any time prohibit the placement of advertisements in publications of general circulation not directed at any Restricted Person. The Non-Solicitation Term shall be automatically extended by the number of days that Seller is found to have been in violation of the provisions of this Section 5.3(a). For purposes of this Section 5.3(a), the term "Buyer" means Buyer and any present or future Affiliate of Buyer during the Non-Solicitation Term.

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(b) Confidentiality. Seller recognizes that by reason of (i) its ownership of the Business and (ii) the information provided by or on behalf of Buyer or any of its Affiliates to Seller in connection with the transactions contemplated hereby, Seller has acquired and/or will acquire Confidential Information, the use or disclosure of which in violation of this Section 5.3(b) could cause the Business, Buyer and/or its Affiliates substantial loss and damages that could not be readily calculated and for which no remedy at law would be adequate. Accordingly, Seller covenants and agrees with Buyer that Seller will not, and will cause its Affiliates not to, at any time, directly or indirectly, use, disclose or publish, any Confidential Information, unless (A) such information becomes generally known to the public through no breach of this Section 5.3(b) by Seller or any of its Affiliates, (B) such information is developed independently by Seller without the use of any Confidential Information or (C) the disclosing Party is advised in writing by counsel that disclosure is required by Law or the order of any Governmental Authority of competent jurisdiction under color of Law; provided that prior to disclosing any information pursuant to clause (C) above, such Person shall, to the extent legally permissible, give prior written notice thereof to Buyer and provide Buyer with the opportunity to contest such disclosure and shall, at Buyer's expense, reasonably cooperate with efforts to prevent such disclosure.

(c) Reasonable Restraint. Seller acknowledges, in connection with the prohibited activities restrictions herein that: (i) the covenants in this Section 5.3 impose a reasonable restraint in light of the activities the Business on the date of this Agreement and the current plans of Buyer, Seller and the Business; (ii) it is the intention of the Parties that the entire goodwill of the Business be transferred to Buyer as part of the transactions contemplated hereby; (iii) that Seller and Buyer explicitly considered the value of the goodwill to be transferred and that such goodwill is valued as a component of the consideration to be paid by Buyer pursuant to the terms hereof; and (iv) that the covenants set forth in this Section 5.3 are a material and substantial part of the transactions contemplated hereby (supported by adequate consideration), and Buyer's failure to receive the entire goodwill contemplated hereby would have the effect of significantly reducing the value of the Business to Buyer.

(d) Reformation. If the courts of any one or more jurisdictions hold any of the covenants or agreements contained in this Section 5.3 to be unenforceable by reason of its extending for too long a period of time or over too large a geographical area or by reason of its being too extensive in any other respect, it shall be interpreted to extend only over the longest period of time for which it may be enforceable, and/or over the largest geographical area as to which it may be enforceable and/or to the maximum extent in all other respects as to which it may be enforceable, all to the fullest extent which such courts deems reasonable and the Agreement shall thereby be reformed. If the courts of any one or more of such jurisdictions hold any of such covenants or agreements wholly unenforceable by reason of the breach of their scope or otherwise, it is the intention of the Parties that such determination not bar or in any way affect any Party's right to relief provided in the courts of any other jurisdiction within the geographical scope of such covenants or agreements, with breaches of such covenants or agreements in such other jurisdiction being, for this purpose, severable into diverse and independent covenants.

(e) Specific Performance. Seller acknowledges that Buyer will be irreparably harmed and that remedies at law would be

inadequate for any actual or threatened breach (for the avoidance of doubt, “threatened breach” as used in this paragraph shall mean the anticipatory repudiation by a Party of its obligations under this Section 5.3) by Seller of any of the covenants or agreements contained in this Section 5.3. It is accordingly agreed that, in addition to any other remedies which may be available upon the actual or threatened breach of any such covenants or agreements, Buyer shall have the right to equitable relief (including in the form of injunctions and orders for specific performance (in each case, without the proof of actual damages) to restrain a breach or threatened breach of, or otherwise to obtain specific performance of, Seller’s covenants and agreements contained in this Section 5.3, in any court having jurisdiction over the Parties and the matter. Seller agrees to waive any requirement for the security or the posting of any bond in connection with any such remedy or relief.

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(f) Independent Covenant. All of the covenants in this Section 5.3 shall be construed as an agreement independent of any other provision in the Transaction Documents, and the existence of any claim or cause of action of Seller against Buyer, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by Buyer of such covenants. The Parties expressly acknowledge that the terms and conditions of this Section 5.3 are independent of the terms and conditions of any other agreements including any employment agreements entered into in connection with this Agreement. The covenants contained in Section 5.3 shall not be affected by any breach of any other provision hereof by any Party.

5.4 Further Assurances.

(a) From time to time after the Closing Date, upon request of any Party, each Party shall execute, acknowledge and deliver all such other instruments and documents and shall take all such other actions required to consummate and make effective the transactions contemplated by the Transaction Documents, to put Buyer in possession and control of all of the Acquired Assets of a tangible nature and to vest Buyer with responsibility for all Assumed Liabilities; provided that Buyer shall not be required to pay any further consideration or amounts therefor (other than the Contingent Consideration, if, when and to the extent payable hereunder).

(b) If at any time or from time to time after the Closing, Seller or any of its Affiliates, on the one hand, or Buyer or any of its Affiliates, on the other hand, shall receive or otherwise possess any asset or right (including cash) that constitutes an Acquired Asset or an Excluded Asset, as the case may be, pursuant to this Agreement, Seller or Buyer (as the case may be) shall promptly transfer, or cause to be transferred, such asset or right to the Person so entitled thereto. Prior to any such transfer in accordance with this Section 5.4(b), the Person receiving or possessing such asset shall hold such asset in trust for such other Person. Without limitation of the foregoing, in the event Seller or any of its Affiliates receives any payment in respect of any Acquired Asset or Buyer or any of its Affiliates receives any payment in respect of an Excluded Asset, Seller or Buyer (as applicable) shall promptly deliver such payment to an account designated in writing by Buyer or Seller (as applicable) by wire transfer of immediately available funds.

(c) Buyer acknowledges that Seller intends to sell, transfer, assign or convey all or part of its rights to Contingent Consideration under Section 1.5 of this Agreement to the Sole Shareholder and/or its other Affiliates. Buyer hereby consents to any such sale(s), transfer(s), assignment(s) or conveyance(s) and agrees, in connection therewith, to, from time to time after the Closing Date upon the reasonable request of Seller and/or the Sole Shareholder, (i) to provide access to Seller, the Sole Shareholder and/or their respective Affiliates to such financial and operating data and other information relating to the Business, as Seller and/or the Sole Shareholder may from time to time reasonably request, (ii) to waive any requirement to deliver an opinion of counsel in connection with such transactions and (iii) to execute, acknowledge and deliver all such other instruments and documents and take all such other actions required to consummate and make effective such transactions.

5.5 Sharing of Data. Buyer shall have the right for a period of seven (7) years following the Closing Date to have reasonable access to those books, records and accounts, including financial and accounting records (including the work papers of Seller’s independent accountants), Tax records, correspondence, production records, employment records and other records that are retained by Seller pursuant to the terms of this Agreement to the extent that any of the foregoing is needed by Buyer for the purpose of conducting the Business after the Closing and complying with its obligations under applicable securities, Tax, environmental, employment or other Laws. Seller shall not destroy any such books, records or accounts retained by it without first providing Buyer with the opportunity to obtain or copy such books, records, or accounts at Buyer’s expense. Promptly upon request by Buyer made at any time following the Closing Date, Seller shall authorize the release to Buyer of all files pertaining to the Acquired Assets or the Business held by any federal, state, county or local authorities, agencies or instrumentalities.

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5.6 Use of Business Name. Seller shall not use, and shall not permit any Affiliate to use, the Business Name after the Closing Date in connection with any business related to, competitive with, or an outgrowth of, the Business. Within ten (10) Business Days after the Closing Date, Seller shall amend its Charter Documents and other corporate records, if necessary, to comply with this provision, unless earlier liquidated.

5.7 Public Announcements and Communications. No Party shall issue any press release or public announcement relating to the subject matter of this Agreement except as may be mutually agreed upon by the Parties; provided, however, that any Party may make any public disclosure it believes in good faith is required by applicable Law or stock market rule (in which case the disclosing party shall use reasonable best efforts to advise (a) Seller in the event that the disclosing party is Buyer or (b) Buyer in the event the disclosing party is Seller, and provide the applicable advised party with a copy of the proposed disclosure prior to making the disclosure).

5.8 Additional Post-Closing Covenants Regarding Adverse Event Reporting. From and after the Closing and at no cost to Buyer, Seller shall promptly forward or cause to be promptly forwarded to Buyer any adverse drug event calls or reports with respect to any of the Products.

6.1 Conditions Precedent to Obligations of Buyer. The obligation of Buyer to effect the Closing is subject to the satisfaction or waiver, at or before the Closing, of the following conditions:

(a) Accuracy of Representations and Warranties. (i) Each of (A) the Seller Fundamental Representations and (B) the other representations and warranties of Seller contained in this Agreement that are qualified by any Seller Material Adverse Change or other materiality (or equivalent) qualification contained in any such representation or warranty shall be true and correct as of the date of this Agreement and as of the Closing as if made as of the Closing (except for representations and warranties made as of a specific date, which shall be true and correct as of such date), (ii) each of the other representations and warranties of Seller contained in this Agreement (other than the Seller Fundamental Representations) that are not qualified by any Seller Material Adverse Change or other materiality (or equivalent) qualification contained in such representation or warranty, shall be true and correct in all material respects as of the date of this Agreement and as of the Closing as if made as of the Closing (except for representations and warranties made as of a specific date, which shall be true and correct in all material respects as of such date), and (iii) Buyer shall have received a certificate signed by the Chief Executive Officer and Chief Financial Officer of Seller, dated as of the Closing, to such effect.

(b) Compliance with Covenants. Seller shall have performed or complied in all material respects with all obligations, agreements and covenants contained in this Agreement to be performed or complied with by Seller prior to the Closing; and Buyer shall have received a certificate signed by the Chief Executive Officer and Chief Financial Officer of Seller, dated as of the Closing, to such effect.

(c) No Violation of Law. No Law shall be in effect that does or seeks to challenge, prohibit, make illegal, enjoin, restrain or prevent the consummation of the transactions contemplated hereby.

(d) No Seller Material Adverse Change. There shall have occurred no result, occurrence, fact, change, event or effect that, individually or taken together with all other results, occurrences, facts, changes, events or effects, has had, or would reasonably be expected to have, a Seller Material Adverse Change.

(e) Buyer Stockholder Approval; Information Statement. The Buyer Stockholder Approval shall have been obtained and the definitive Information Statement shall have been mailed to Buyer's stockholders entitled thereto in accordance with Section 4.7(b) at least twenty (20) calendar days prior to the Closing Date and the consummation of the transactions contemplated hereby shall be permitted by Regulation 14C of the Exchange Act (including Rule 14c-2 promulgated under the Exchange Act).

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(f) Regulatory Matters. With respect to any of the Products in the United States, (i) no Governmental Authority shall have permanently prohibited the further clinical use or terminated the IND (including under 21 CFR 312.44 on grounds of safety) and (ii) no IND shall have been definitively converted to "inactive status" under 21 CFR 312.45 as a result of a clinical hold imposed by the FDA on grounds of safety.

(g) Other Deliveries. Seller shall have made all of the deliveries set forth in Section 1.4(a).

6.2 Conditions Precedent To Obligations of Seller. The obligation of Seller to effect the Closing is subject to the satisfaction or waiver, at or before the Closing, of the following conditions:

(a) Accuracy of Representations and Warranties. (i) Each of (A) the Buyer Fundamental Representations or (B) the other representations and warranties of Buyer contained in this Agreement that are qualified by any Buyer Material Adverse Change or other materiality (or equivalent) qualification contained in any such representation or warranty shall be true and correct as of the date of this Agreement and as of the Closing as if made as of the Closing (except for representations and warranties made as of a specific date, which shall be true and correct as of such date), (ii) each of the other representations and warranties of Buyer contained in this Agreement (other than the Buyer Fundamental Representations) that are not qualified by any Buyer Material Adverse Change or other materiality (or equivalent) qualification contained in such representation or warranty shall be true and correct in all material respects as of the date of this Agreement and as of the Closing as if made as of the Closing (except for representations and warranties made as of a specific date, which shall be true and correct in all material respects as of such date), and (iii) Seller shall have received a certificate signed by the Chief Executive Officer and Chief Financial Officer of Buyer, dated as of the Closing, to such effect.

(b) Compliance with Covenants. Buyer shall have performed or complied in all material respects with all obligations, agreements and covenants contained in this Agreement to be performed or complied with by Buyer prior to the Closing; and Seller shall have received a certificate signed by the Chief Executive Officer and Chief Financial Officer of Buyer, dated as of the Closing, to such effect.

(c) No Violation of Law. No Law shall be in effect that does or seeks to challenge, prohibit, make illegal, enjoin, restrain or prevent the consummation of the transactions contemplated hereby.

(d) No Buyer Material Adverse Change. There shall have occurred no result, occurrence, fact, change, event or effect that, individually or taken together with all other results, occurrences, facts, changes, events or effects, has had, or would reasonably be expected to have, a Buyer Material Adverse Change.

(e) Information Statement. The definitive Information Statement shall have been mailed to Buyer's stockholders entitled thereto in accordance with Section 4.7(b) at least twenty (20) calendar days prior to the Closing Date and the consummation of the transactions contemplated hereby shall be permitted by Regulation 14C of the Exchange Act (including Rule 14c-2 promulgated under the Exchange Act).

(f) Other Deliveries. Buyer shall have made all of the deliveries set forth in Section 1.4(b).

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ARTICLE VII TERMINATION

7.1 Termination. This Agreement may be terminated at any time prior to the Closing solely:

- (a) by mutual written consent of Buyer and Seller;
- (b) by either Buyer or Seller, if the Closing shall not have occurred by the Termination Date; provided, however, that the right to terminate this Agreement pursuant to this Section 7.1(b) shall not be available to any Party whose breach of any provision of this Agreement results in or causes the failure of any of the conditions precedent set forth in Section 6.1 or Section 6.2 to be satisfied or the failure of the transactions contemplated hereby to be consummated;
- (c) by either Buyer or Seller, if any Governmental Authority shall have issued a final, non-appealable order, decree or ruling, or there shall exist any Law, in each case that prohibits, makes illegal, enjoins or prevents the consummation of the transactions contemplated hereby;
- (d) by Buyer (if it is not in material breach of its representations, warranties, covenants and obligations under the Transaction Documents), if there has been a breach of, or inaccuracy in, any representation, warranty, covenant or agreement of Seller set forth in the Transaction Documents, which breach or inaccuracy would cause any condition set forth in Section 6.1 not to be satisfied if it remained uncured as of the Termination Date (and such breach or inaccuracy has not been cured or such condition has not been satisfied within twenty (20) Business Days after the receipt of written notice thereof); or
- (e) by Seller (if it is not in material breach of its representations, warranties, covenants and obligations under the Transaction Documents), if there has been a breach of, or inaccuracy in, any representation, warranty, covenant or agreement of Buyer set forth in the Transaction Documents, which breach or inaccuracy would cause any condition set forth in Section 6.2 not to be satisfied if it remained uncured as of the Termination Date (and such breach or inaccuracy has not been cured or such condition has not been satisfied within twenty (20) Business Days after the receipt of written notice thereof).

7.2 Effect of Termination. In the event of any termination of this Agreement pursuant to Section 7.1, this Agreement forthwith shall become void and of no further force or effect, and no Party (or any of its Affiliates or Representatives) shall have any liability or obligation hereunder, except (a) the provisions of Article IX (definitions) and the following Sections shall survive any such termination: 4.2(c) (continued effect of Confidentiality Agreement), 7.2 (effect of termination), 10.1 (notices), 10.2 (entire agreement), 10.3 (successors and assigns), 10.4 (counterparts; facsimile signatures), 10.5 (expenses and fees), 10.6 (governing law), 10.7 (submission to jurisdiction), 10.8 (dispute resolution), 10.10 (amendment; waiver), 10.11 (absence of third party beneficiary rights) and 10.12 (mutual drafting), and (b) nothing herein shall relieve any Party from liability for fraud or willful breach of the Transaction Documents prior to such termination.

ARTICLE VIII REMEDIES

8.1 Indemnification by Seller. If the Closing occurs, Seller covenants and agrees to defend and indemnify Buyer and its Affiliates and each of Buyer's and its Affiliates' respective Representatives (individually, a "Buyer Indemnified Party" and collectively, the "Buyer Indemnified Parties") in respect of, and hold the Buyer Indemnified Parties harmless against and will compensate and reimburse the Buyer Indemnified Parties for, any and all Losses incurred or suffered by any Buyer Indemnified Party (regardless of whether such Losses relate to any Third Party Claim) resulting from, relating to or constituting:

- (a) any breach of or inaccuracy in any representation or warranty of Seller set forth in this Agreement or in the certificate delivered at the Closing under Section 6.1(a);
- (b) any nonfulfillment or breach of any covenant or agreement on the part of Seller set forth in this Agreement; and
- (c) any Retained Liabilities.

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8.2 Indemnification by Buyer. If the Closing occurs, Buyer covenants and agrees to defend and indemnify Seller and its Affiliates and each of Seller's and its Affiliates' respective Representatives (individually, a "Seller Indemnified Party" and collectively, the "Seller Indemnified Parties") in respect of, and hold the Seller Indemnified Parties harmless against and will compensate and reimburse the Seller Indemnified Parties for, any and all Losses incurred or suffered by any Seller Indemnified Party (regardless of whether such Losses relate to any Third Party Claim) resulting from, relating to or constituting:

- (a) any breach of or inaccuracy in any representation or warranty of Buyer set forth in this Agreement or in the certificate delivered at the Closing under Section 6.2(a);
- (b) any nonfulfillment or breach of any covenant or agreement on the part of Buyer set forth in this Agreement; and
- (c) any Assumed Liabilities.

8.3 Limitations on Indemnification Obligations.

(a) Notwithstanding Section 8.1, there shall be no liability for indemnification under Section 8.1(a) unless (i) the aggregate amount of all Losses for which indemnification is to be provided thereunder exceeds \$1,000,000 (the "Indemnification Threshold"), at which time Seller will be obligated to indemnify the Buyer Indemnified Parties with respect to the aggregate amount of all such Losses in excess of the Indemnification Threshold, and (ii) the amount of Losses with respect to any single Claim, or any aggregated Claims arising out of the

same or related facts, events or circumstances, for which indemnification is to be provided under Section 8.1(a) exceeds \$25,000 (the “Per-Claim Indemnification Threshold”); provided that the Indemnification Threshold and the Per-Claim Indemnification Threshold shall not apply in the case of (A) Fraud, (B) any breach of or inaccuracy in any representation or warranty made by Seller in any of the following Sections: 2.1 (due organization), 2.2(a) (authorization), 2.5 (assets) and 2.17 (brokers and agents) (collectively, the “Seller Fundamental Representations”), (C) any breach of or inaccuracy in any representation or warranty made by Seller in Section 2.6 (taxes) or (D) any Taxes that constitute Retained Liabilities.

(b) Notwithstanding Section 8.2, there shall be no liability for indemnification under Section 8.2(a) unless (i) the aggregate amount of Losses for which indemnification is to be provided thereunder exceeds the Indemnification Threshold, at which time Buyer will be obligated to indemnify the Seller Indemnified Parties with respect to the aggregate amount of all Losses described in Section 8.2(a) in excess of the Indemnification Threshold, and (ii) the amount of Losses with respect to any single Claim, or any aggregated Claims arising out of the same or related facts, events or circumstances, for which indemnification is to be provided under Section 8.2(a) exceeds the Per-Claim Indemnification Threshold; provided that the Indemnification Threshold and the Per-Claim Indemnification Threshold shall not apply in the case of (A) Fraud, (B) any breach of or inaccuracy in any representation or warranty made by Buyer in any of the following Sections: 3.1 (due organization), 3.2(a) (authorization), 3.4 (capitalization), 3.5 (buyer common stock) and 3.13 (brokers and agents) (collectively, the “Buyer Fundamental Representations”) or (C) any breach of or inaccuracy in any representation or warranty made by Buyer in Section 3.8 (taxes).

(c) The indemnification obligations of Seller under Section 8.1(a) shall be limited in the aggregate to an amount equal to the Cap, provided, however, that the Cap shall not apply to Seller’s indemnification obligations under Section 8.1(a) in the case of (i) Fraud, (ii) any breaches of or inaccuracies in any Seller Fundamental Representations, (iii) any breaches of or inaccuracies in any of Seller’s representations or warranties set forth in Section 2.6 (taxes) or (iv) any Taxes that constitute Retained Liabilities, which obligations (when aggregated with Seller’s other indemnification obligations under Section 8.1(a)) shall be limited to an amount equal to the Maximum Liability Amount. Notwithstanding anything to the contrary in this Agreement, except in the case of Fraud, the maximum aggregate liability of Seller (for indemnification or otherwise) with respect to any matter under this Agreement (including with respect to any breaches of or inaccuracies in any Seller Fundamental Representations, any of Seller’s representations or warranties set forth in Section 2.6 (taxes) or pursuant to any of the other indemnities set forth in Section 8.1) shall be the Maximum Liability Amount.

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(d) The indemnification obligations of Buyer under Section 8.2(a) shall be limited in the aggregate to an amount equal to the Cap, provided, however, that the Cap shall not apply to Buyer’s indemnification obligations under Section 8.2(a) in the case of (i) Fraud, (ii) any breaches of or inaccuracies in any Buyer Fundamental Representations or (iii) any breaches of or inaccuracies in any of Buyer’s representations or warranties set forth in Section 3.8 (taxes), which obligations (when aggregated with Buyer’s other indemnification obligations under Section 8.2(a)) shall be limited to an amount equal to the Maximum Liability Amount. Notwithstanding anything to the contrary in this Agreement, except in the case of Fraud, the maximum aggregate liability of Buyer (for indemnification or otherwise) with respect to any matter under this Agreement (including with respect to any breaches of or inaccuracies in any Buyer Fundamental Representations, any of Buyer’s representations or warranties set forth in Section 3.8 (taxes) or pursuant to any of the other indemnities set forth in Section 8.2) shall be the Maximum Liability Amount.

(e) Notwithstanding anything to the contrary in this Agreement: (i) no Indemnified Party shall have any obligations under Section 8.1 or Section 8.2, as applicable, with respect to any matter for which any Indemnified Party is or would be entitled to indemnification under Section 8.1 or Section 8.2 (without giving effect to any limitations, including as to time, survival periods, deductibles, thresholds, caps, knowledge or materiality qualifiers); and (ii) if a Party is entitled to bring a claim under more than one provision of Section 8.1 or 8.2, as the case may be, such Party may choose in its sole and absolute discretion the provision or provisions under which it seeks indemnification.

(f) The amount of Losses recoverable by the Indemnified Party under this Article VIII shall be reduced, on a dollar-for-dollar basis, by the amount of (i) any insurance proceeds received by the Indemnified Party in connection with a Claim under this Article VIII (net of any costs of obtaining such recovery and increases in premiums resulting from such Losses which are borne by the Indemnified Party) and (ii) any amounts collected from any other third parties in respect of such Losses (net of any costs of obtaining such recovery).

(g) Notwithstanding anything to the contrary in this Agreement, for purposes of determining (i) whether there has been a breach of or inaccuracy in a representation or warranty requiring a Party to indemnify as provided in Section 8.1(a) or Section 8.2(a), as applicable, and (ii) the amount of Losses arising from any such breach, each representation or warranty made by such Party (other than Section 2.4(b) (absence of changes); 3.6(a) (SEC filings; financial statements; information provided) and Section 3.6(b) (absence of changes)) shall be deemed to have been made without any qualifications or limitations as to materiality (including any qualifications or limitations made by reference to a Seller Material Adverse Change or Buyer Material Adverse Change).

8.4 Survival and Expiration of Representations, Warranties, Covenants and Agreements. With respect to any claim that any Party may have against any other Party that is permitted pursuant to the terms of this Agreement, the survival periods set forth and agreed to in this Section 8.4 shall govern when any such claim may be brought.

(a) The representations and warranties of Seller set forth in this Agreement or any certificate delivered by or on behalf of Seller in connection herewith shall survive the Closing and, except in the case of Fraud, shall expire on the applicable dates specified in clause (i), (ii) or (iii) of this Section 8.4(a):

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- (i) except as set forth in clause (ii) or (iii) of this Section 8.4(a), eighteen (18) months after the Closing Date;
- (ii) with respect to the Seller Fundamental Representations, indefinitely; and

(iii) with respect to the representations and warranties contained in Section 2.6 (taxes), on the date that is thirty (30) days after the expiration of the federal, state, local or foreign statute of limitations applicable to the underlying claim;

provided, however, that any Claim in respect of which a Claim Notice has been timely given in accordance with this Agreement prior to the expiration of the applicable survival period provided for above shall survive such expiry until such Claim has been finally resolved.

(b) The representations and warranties of Buyer set forth in this Agreement or any certificate delivered by or on behalf of Buyer in connection herewith shall survive the Closing and, except in the case of Fraud, shall expire on the applicable dates specified in clause (i), (ii) or (iii) of this Section 8.4(b):

(i) except as set forth in clause (ii) or (iii) of this Section 8.4(b), eighteen (18) months after the Closing Date;

(ii) with respect to the Buyer Fundamental Representations, indefinitely; and

(iii) with respect to the representations and warranties contained in Section 3.8 (taxes), on the date that is thirty (30) days after the expiration of the federal, state, local or foreign statute of limitations applicable to the underlying claim;

provided, however, that any Claim in respect of which a Claim Notice has been timely given in accordance with this Agreement prior to the expiration of the applicable survival period provided for above shall survive such expiry until such Claim has been finally resolved.

(c) All covenants and agreements of the Parties contained in this Agreement required to be performed or complied with prior to the Closing shall survive the Closing for eighteen (18) months after the Closing Date, and all other covenants and agreements of the Parties contained in this Agreement (including the obligations set forth in Sections 8.1 and 8.2), as well as any covenants required to be performed or complied with prior to the Closing, to the extent they also contemplate performance following the Closing, shall survive the Closing and continue in effect in accordance with their respective terms, provided that any claims for a breach of any such covenant or other agreement may only be brought during a period not to exceed the applicable statute of limitations.

8.5 Indemnification Procedures. All claims for indemnification under this Article VIII ("Claims") shall be asserted and resolved as follows:

(a) In the event that any Person entitled to indemnification hereunder (the "Indemnified Party") has a Claim against any Party obligated to provide indemnification pursuant to Section 8.1 or 8.2, as applicable (the "Indemnifying Party"), which Claim has been asserted against an Indemnified Party by a Third Party (a "Third Party Claim"), the following provisions shall apply:

(i) The Indemnified Party shall with reasonable promptness notify the Indemnifying Party of such Third Party Claim, specifying the nature of such Third Party Claim and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such Third Party Claim) (the "Claim Notice"). The Indemnified Party's failure to give reasonably prompt notice as required by this Section 8.5 of any Third Party Claim which may give rise to a right of indemnification hereunder shall not relieve the Indemnifying Party of any Liability which the Indemnifying Party may have to the Indemnified Party, except to the extent the failure to give such notice materially prejudiced the Indemnifying Party.

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(ii) If any Indemnified Party asserts a Claim involving a Third Party Claim, the Indemnifying Party shall, within fifteen (15) days from delivery of the Claim Notice (the "Notice Period"), notify the Indemnified Party (A) whether or not such Indemnifying Party disputes the Liability to the Indemnified Party hereunder with respect to such Third Party Claim and (B) if such Indemnifying Party does not dispute such Liability, whether or not the Indemnifying Party desires, at the sole cost and expense of the Indemnifying Party, to defend against such Third Party Claim, provided that the Indemnified Party is hereby authorized (but not obligated) prior to and during the Notice Period to file any motion, answer or other pleading and to take any other action which the Indemnified Party shall deem necessary or appropriate to protect the Indemnified Party's interests. If, and for so long as, (x) the Indemnifying Party notifies the Indemnified Party within the Notice Period that the Indemnifying Party does not dispute the Indemnifying Party's obligation to indemnify hereunder and desires to defend the Indemnified Party against such Third Party Claim, and (y) the Third Party Claim does not (1) involve criminal liability or any admission of wrongdoing, (2) seek equitable relief or any other non-monetary remedy against the Indemnified Party, (3) involve any Governmental Authority as a party thereto or (4) involve an *ad damnum* that, taken together with the estimated costs of defense thereof, the claimed amount with respect to any unresolved claims for indemnification then pending, is greater than the Cap, then except as hereinafter provided, such Indemnifying Party shall have the right to defend against such Third Party Claim by appropriate proceedings with legal counsel reasonably acceptable to the Indemnified Party, which proceedings shall be diligently prosecuted by such Party to a final conclusion; provided that, unless the Indemnified Party otherwise agrees in writing, the Indemnifying Party may not settle any matter (in whole or in part) unless such settlement (I) includes a complete and unconditional release of the Indemnified Party and its Affiliates in respect of the Third Party Claim, (II) involves no admission of wrongdoing by the Indemnified Party or its Affiliates and (III) excludes any injunctive or non-monetary relief applicable to the Indemnified Party or its Affiliates. If the Indemnified Party desires to participate in, but not control, any such defense or settlement the Indemnified Party may do so at its sole cost and expense.

(iii) If (A) the Indemnifying Party elects not to defend the Indemnified Party against such Third Party Claim, or fails to diligently defend such Claims, or (B) the terms of this Agreement do not permit the Indemnifying Party to defend the Indemnified Party against such Third Party Claim, or (C) the Indemnified Party advises that there are issues that raise actual or potential conflicts of interest between the Indemnifying Party and the Indemnified Party, or (D) the Indemnified Party has different or additional defenses available to it, then the Indemnified Party, without waiving any rights against the Indemnifying Party, may settle or defend against any such Third Party Claim in the Indemnified Party's sole and absolute discretion and the Indemnified Party shall be entitled to recover from the Indemnifying Party the amount of any settlement or judgment and, on an ongoing basis, all Losses of the Indemnified Party with respect thereto, including interest from the date such Losses were incurred.

(b) Notwithstanding anything to the contrary herein, an Indemnified Party may make a Claim hereunder even where the full amount of any Losses is not yet known, provided the Claim Notice sets forth the specific basis for any such Claim to the extent then

feasible.

8.6 **Exclusive Remedy.** Absent Fraud, after the Closing, the Parties' sole and exclusive remedy for any and all claims arising under, out of or related to this Agreement or with respect to the transactions contemplated hereby shall be indemnification provided in this Article VIII. Notwithstanding anything to the contrary, and without limiting the preceding sentence, in the event of Fraud by any Party, no limitations contained in this Article VIII shall apply to any Claims against such Party with respect to the matter that is the subject of such Fraud. Nothing in this Section 8.6 or elsewhere in this Agreement shall affect the Parties' rights to specific performance pursuant to Section 10.15 or other equitable remedies with respect to the covenants referred to in this Agreement to be performed after the Closing). Seller and Buyer each hereby waive any provision of any applicable Law to the extent that it would limit or restrict the agreement contained in this Section 8.6.

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8.7 **Payments.** Once any Losses are agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article VIII, the Indemnifying Party shall satisfy its indemnification obligations with respect to such Losses within fifteen (15) Business Days of such agreement or final, non-appealable adjudication, by wire transfer of immediately available funds. The Parties agree that should an Indemnifying Party not make full payment of any such obligations within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to but excluding the date such payment has been made at a rate per annum equal to ten percent (10%). Such interest shall be calculated daily on the basis of a 365-day year and the actual number of days elapsed.

8.8 **Tax Treatment.** All indemnification payments made hereunder shall be treated by all parties as adjustments to the Purchase Price for Tax purposes unless otherwise required by Law.

ARTICLE IX DEFINITIONS

9.1 Specific Definitions.

(a) **"Acquired Assets"** means, collectively, solely the assets set forth below, to the extent owned or licensed by Seller (except as provided in Section 1.1(c)):

- (i) the Products;
- (ii) all Inventories, wherever located, including consignment Inventory and Inventory held on order or in transit;
- (iii) all Seller Intellectual Property;
- (iv) all rights under each of the Assigned Contracts;
- (v) all world-wide regulatory filings, marketing authorizations, permits, licenses, registrations, regulatory clearances, approvals, concessions, qualifications, registrations, certifications and similar items ("**Permits**") that cover or are related to any of the Products or the Business, including those related to market, pricing or reimbursement approval of the Products in the Territory (the "**Transferred Permits**"), all of which as of the date hereof are set forth on Schedule 1;
- (vi) all Product Books and Records;
- (vii) all Product Materials and Data;
- (viii) all goodwill and going concern value primarily related to the Products, the Business and the other Acquired Assets;
- (ix) the Business Name and all goodwill associated therewith; and
- (x) the tangible assets set forth on Schedule 1.

(b) **"Acquisition Transaction"** means (i) any merger, liquidation, recapitalization, consolidation or other business combination, or acquisition or sale of a majority of Seller's outstanding securities or assets, or any combination of the foregoing, involving Seller, the Business, any of the Products or any Acquired Asset (excluding the transactions contemplated hereby), and (ii) any agreement, arrangement or understanding requiring Seller to abandon, terminate or fail to consummate any of the transactions contemplated hereby.

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(c) **"Affiliate"** means, with respect to any specified Person, any Person that, directly or indirectly through one or more entities, controls or is controlled by, or is under common control with, such specified Person. As used herein, "controls", "control" and "controlled" means the possession, direct or indirect, of the power to direct the management and policies of a Person, whether through the ownership of the voting interests of such Person, through Contract or otherwise. For purposes of this Agreement, neither Seller nor the Sole Shareholder shall be considered "Affiliates" of Buyer.

(d) **"Assigned Contract"** means any Contract that relates primarily to the Products, the Business or the Acquired Assets.

(e) **"Assumed Liabilities"** means the following (and only the following) liabilities of Seller, in each case to the extent relating to the Products, the Acquired Assets or the conduct of the Business after the Closing Date, and in each case solely to the extent not a Retained Liability: (i) all Liabilities of Seller arising after the Closing under the Assigned Contracts; provided that this clause (i) shall not encompass

any such Liabilities which relate to any breach of contract, breach of warranty, tort, infringement or violation of Law or which arose out of any charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand arising at or prior to the Closing; and (ii) all Liabilities arising after the Closing to the extent related to the conduct by Buyer and its Affiliates of the Business, including the manufacturing, using, developing, promoting, marketing, distributing, selling or offering to sell the Products. Notwithstanding anything to the contrary in this Agreement, all Taxes relating to the Business or the Acquired Assets for a Post-Closing Tax Period (as determined in accordance with Section 5.2(b)) shall constitute Assumed Liabilities.

(f) “Benefit Arrangement” means any benefit arrangement, obligation, custom or practice, whether or not legally enforceable, to provide benefits, other than salary or under a Benefit Plan, as compensation for services rendered, including employment or individual consulting agreements, severance agreements, stay or retention bonuses or compensation, executive or incentive compensation programs or arrangements, incentive programs or arrangements, sick leave, vacation pay, plant closing benefits, patent award programs, salary continuation for disability, consulting, or other compensation arrangements, retirement, deferred compensation, bonus, stock option or purchase plans or programs, hospitalization, medical insurance, life insurance, tuition reimbursement or scholarship programs, employee discount programs, meals, travel, or vehicle allowances, any plans subject to Section 125 of the Code and any plans providing benefits or payments in the event of a change of control, change in ownership or effective control, or sale of a substantial portion (including all or substantially all) of the assets of any business or portion thereof.

(g) “Benefit Plan” has the meaning given in ERISA Section 3(3), together with plans or arrangements that would be so defined if they were not (i) otherwise exempt from ERISA by that or another section, (ii) maintained outside the United States or (iii) individually negotiated or applicable only to one person.

(h) “Books and Records” means business records, financial books and records, regulatory correspondence and databases, sales order files, supplier lists, customer lists, dealer lists, studies, surveys, analyses, strategies, plans, forms, designs, diagrams, drawings, specifications, technical data and production and quality control records and formulations.

(i) “Business” means the research, development, testing or manufacture of any of the Products in the Territory, and the Exploitation of assets related thereto, as now or previously conducted, or currently proposed to be conducted by Seller.

(j) “Business Day” means any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions located in New York, New York are permitted or required by Law, executive order or governmental decree to remain closed.

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(k) “Business Name” means the name “NeurMedix” and the other business names, brand names, marketing names, trade names, trademarks, service marks and domain names primarily related to or used in connection with the Business and any and all other derivatives thereof, including any registrations and/or applications for registration of the foregoing.

(l) “Buyer Common Stock” means the Class A common stock, \$0.0001 par value per share, of Buyer.

(m) “Buyer Group” means the Buyer and its Subsidiaries.

(n) “Buyer Material Adverse Change” means any result, occurrence, fact, change, event or effect that, individually or in the aggregate with any other results, occurrences, facts, changes, events and/or effects, has had or would reasonably be expected to have a material adverse effect on (i) any member of the Buyer Group, their respective businesses, conditions, assets and liabilities, or (ii) the ability of Buyer to consummate the transactions contemplated hereby or to perform its obligations hereunder; provided, however, that, for purposes of clause (i), none of the following, to the extent arising after the date hereof, shall be deemed in itself, or in any combination with another item listed below as an exception, to constitute, and none of the following, to the extent arising after the date hereof, shall be taken into account in determining whether there has been or will be, a Buyer Material Adverse Change: (a) any changes in the United States or global economy generally or the U.S. or global capital, credit or financial markets generally, including changes in commercial bank loan interest risks or currency exchange rates; (b) any fluctuations in prices of commodities used or purchased by Buyer; (c) any changes generally affecting the industry in which Buyer participates; (d) any changes required by GAAP; (e) any changes in, or required by, applicable Laws; (f) any effect of earthquakes, hurricanes, floods or other natural disasters; (g) any effect attributable to the announcement or pendency of the transactions contemplated by this Agreement or the identity of the Parties or their Affiliates; (h) any effect of acts of war (whether or not declared), armed hostilities, sabotage or terrorism; (i) any failure of any member of the Buyer Group to meet any projections, estimates or budgets for any period; and (j) any changes (in and of itself) in the market price or trading volume of the Buyer Common Stock, except, in the case of clauses (a) through (f) and (h), to the extent Buyer is disproportionately adversely affected thereby as compared to other companies in the industry in which Buyer operates.

(o) “Buyer’s Knowledge” means the actual knowledge after reasonable inquiry of each Person named on Schedule 2 as to any matter in question.

(p) “Buyer Outstanding Shares” means the sum of (i) the number of shares of Buyer Common Stock outstanding on the date of this Agreement, plus (ii) any shares of Buyer Common Stock issued pursuant to equity incentive plans to directors, officers, employees and consultants of Buyer, plus (iii) any shares of Buyer Common Stock issued in capital raising transactions, plus (iv) any shares of Buyer Common Stock issued pursuant to this Agreement.

(q) “Buyer Stockholder Approval” means the approval by the stockholders of Buyer of the issuance of Buyer Common Stock pursuant to this Agreement by a majority of the votes cast on the proposal in accordance with Rule 5635 of the Nasdaq Listing Rules.

(r) “Buyer Trading Price” means the volume weighted average price per share (calculated to the nearest one-hundredth of one cent) of Buyer Common Stock on the Nasdaq Stock Market or other national securities exchange on which the Buyer Common Stock is then traded, as calculated by Bloomberg Financial LP under the function “VWAP” for the applicable period.

(s) “Cap” means an amount equal to the sum of (i) an amount equal to 10% of the Initial Cash Payment, plus (ii) an amount equal to 10% of the value of the Initial Stock Consideration, with the value of the Initial Stock Consideration for purposes of this

Section 8.3(c) being equal to the number of shares of Buyer Common Stock constituting the Initial Stock Consideration multiplied by the Buyer Trading Price for the ten (10) consecutive Business Days ending the Business Day immediately before the Closing Date, plus (iii) an amount equal to 10% of the Contingent Cash Amount to the extent paid by Buyer pursuant to Section 1.5(a), plus (iv) an amount equal to 10% of the value of the Contingent Stock Consideration to the extent delivered by Buyer pursuant to Section 1.5(b), with the value of such Contingent Stock Consideration for purposes of this Section 8.3(c) being equal to the amount set forth under "Value of Buyer Common Stock" in the table included in Section 1.5(b)(i).

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- (t) "cGMP" means the then-current good manufacturing practices required by the FDA, as set forth in 21 C.F.R. Parts 210 and 211 and related guidance.
- (u) "Charter Documents" means: (i) the articles or certificate of incorporation and the bylaws of a corporation; (ii) the partnership agreement and any statement of partnership of a general partnership; (iii) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (iv) the limited liability company agreement, operating agreement and the certificate of organization of a limited liability company; (v) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; and (vi) any amendment to any of the foregoing.
- (v) "Code" means the Internal Revenue Code of 1986.
- (w) "Confidentiality Agreement" means the confidentiality agreement, dated March 25, 2021, by and between Seller and Buyer.
- (x) "Confidential Information" means, as to any Person, any information not generally known outside such Person that may be of value to such Person including information that has not been disclosed to the public or to the trade with respect to such Person's present or future business, operations, services, products, research, inventions, discoveries, drawings, designs, plans, processes, models, technical information, facilities, methods, trade secrets, copyrights, software, source code, systems, patents, procedures, manuals, specifications, any other intellectual property, confidential reports, price lists, pricing formulas, customer lists, financial information (including the revenues, costs or profits associated with any of such Person's products or services), business plans, lease structures, projections, prospects, opportunities or strategies, acquisitions or mergers, advertising or promotions, personnel matters, legal matters, any other confidential and proprietary information, but excludes any information already properly in the public domain. "Confidential Information" also includes confidential and proprietary information and trade secrets that Third Parties entrust to such Person in confidence.
- (y) "Contingent Consideration" means, collectively, (i) the Contingent Cash Amount and (ii) the Contingent Stock Consideration.
- (z) "Contract" means any contract, plan, undertaking, arrangement, concession, understanding, agreement, agreement in principle, franchise, permit, instrument, license, lease, sublease, note, bond, indenture, deed of trust, mortgage, loan agreement or other commitment, whether written or oral.
- (aa) "ERISA" means the Employee Retirement Income Security Act of 1974.
- (bb) "Exchange Act" means the Securities Exchange Act of 1934, as amended.
- (cc) "Excluded Assets" means all assets of Seller other than the Acquired Assets.
- (dd) "Exploit", including with correlative meaning the term "Exploitation", means research, develop, design, test, modify, make, use, sell, have made, used and sold, import, market, promote, package, label, distribute, commercialize, transport, store, display, reproduce, support, maintain, modify and create derivative works.

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- (ee) "FDA" means the U.S. Food and Drug Administration.
- (ff) "Fraud" means common law fraud under the Laws of the State of Delaware.
- (gg) "Fundamental Transaction" means (i) any merger, consolidation or similar business combination pursuant to which more than fifty percent (50%) of the outstanding Buyer Common Stock would be converted into cash or securities of such person or group; (ii) the acquisition by any Third Party of more than fifty percent (50%) of the Buyer Common Stock or all or substantially all assets of Buyer (including by merger, consolidation or similar business combination); (iii) the sale, assignment, transfer, conveyance or other disposition of all or substantially all of the Milestone Products to a Third Party; or (iv) the stockholders of Buyer approve a plan of complete liquidation of Buyer.
- (hh) "GAAP" means U.S. generally accepted accounting principles.
- (ii) "Good Clinical Practices" means all applicable current good clinical practice requirements for the design, conduct, performance, monitoring, auditing, recording, analyses and reporting of clinical trials, including, as applicable, (i) as set forth in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use E6 and any other guidelines for good clinical practice for trials on medicinal products in the Territory, (ii) the Declaration of Helsinki (2000) as last amended at the 52nd World Medical Association in October 2000 and any further amendments or clarifications thereto, (iii) 21 C.F.R. Parts 50, 54, 56, 312 and 314, as may be amended from time to time, and (iv) the equivalent applicable Laws in any relevant country, each as may be amended and applicable from time to time and in each case, that provide for, among other things, assurance that the clinical data and reported results are credible and accurate and protect the rights, integrity, and confidentiality of trial subjects.

(jj) “Good Laboratory Practices” means the then-current requirements for laboratory activities for pharmaceuticals, as set forth in the FDA’s Good Laboratory Practice regulations as defined in 21 C.F.R. Part 58, and such standards of good laboratory practice as are required by the European Union and other organizations and Governmental Authority in countries in which a Product is intended to be sold, to the extent such standards are not less stringent than United States Good Laboratory Practice.

(kk) “Governing Body” means the board of directors, manager, member, member representative, general partner or other governing body of a Person that is not a natural person.

(ll) “Governmental Authority” means (i) any federal, state, local or foreign governmental or quasi-governmental authority, (ii) any executive or legislative or judicial branch thereof, (iii) any municipality or subdivision thereof, (iv) any authority, department, commission, board, bureau, agency, court, tribunal or instrumentality thereof, or (v) any applicable self-regulatory organization.

(mm) “IND” means an investigational new drug application filed with the FDA pursuant to 21 C.F.R., Part 312.

(nn) “Initial Cash Payment” means an amount in cash equal to the aggregate amount of Seller’s direct and documented cash expenditures to advance the licensed programs from March 1, 2021 through the Closing, which amount does not include any of Seller’s fees for legal or similar professional services, including without limitation for Seller’s aborted Regulation A securities offering.

(oo) “Initial Stock Consideration” means 8,361,308 newly issued shares of Buyer Common Stock.

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(pp) “Intellectual Property” means the following subsisting throughout the world: (i) 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) (collectively, “Patent Rights”); (ii) registered trademarks and service marks, logos, Internet domain names, corporate names, domain names and doing business designations and all registrations and applications for registration of the foregoing, common law trademarks and service marks and trade dress (collectively, “Trademarks”), and all goodwill in the foregoing; (iii) copyrights, designs, data and database rights and registrations and applications for registration thereof, including moral rights of authors; (iv) inventions, invention disclosures, statutory invention registrations, discoveries, trade secrets, technical information, know-how, processes, techniques, technologies, formulations, specifications, research and development information, scientific data and other data and results, whether patentable or non-patentable, whether copyrightable or non-copyrightable and whether or not reduced to practice; and (v) other proprietary rights relating to any of the foregoing (including the right to bring suit and collect damages for past, present and future infringement and collect damages and all other remedies against infringement thereof and rights of protection of interest therein under the Laws of all jurisdictions).

(qq) “Intellectual Property Registrations” means Patent Rights, registered Trademarks, registered copyrights and designs and applications for each of the foregoing, in each case primarily relating to the Products and owned or purported to be owned by Seller.

(rr) “Inventory” means all inventories of products, work-in-process, finished goods, raw materials, supplies, equipment, parts, labels and packaging, in each case, relating primarily to the Products.

(ss) “IRS” means the U.S. Internal Revenue Service.

(tt) “Law” means each applicable law, order, judgment, rule, code, statute, regulation, requirement, variance, decree, writ, injunction, award, ruling or ordinance of any Governmental Authority, including the common law.

(uu) “Legal Proceeding” means any civil, criminal or administrative action, suit, arbitration, demand, claim, complaint, hearing, inquiry, demand letter, warning letter, proceeding, notice of violation, investigation or information request of or before any Governmental Authority or before any arbitrator.

(vv) “Liability” means any direct or indirect liability, indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or responsibility, whether accrued, absolute, contingent, mature, unmature or otherwise and whether known or unknown, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured.

(ww) “Licensor” means any licensor of Seller Licensed Intellectual Property.

(xx) “Lien” means any adverse claim, mortgage, security interest, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, preference, priority or other security agreement, option, warrant, attachment, right of first refusal, preemption, conversion, put, call or other claim or right, restriction on transfer, or preferential arrangement of any kind or nature whatsoever (including any restriction on the transfer of any assets), any conditional sale or other title retention agreement and any financing lease involving substantially the same economic effect as any of the foregoing.

(yy) “Losses” means all liabilities, losses, claims, damages, costs and expenses (including amounts paid in settlement, interest, court costs, reasonable fees and expenses of attorneys, accountants, financial advisors and other experts, and other expenses of litigation); provided, however, that in no event shall “Losses” include any indirect, consequential, incidental, special or punitive damages, except in any such case to the extent actually paid or payable to a Third Party.

(zz) “Maximum Liability Amount” means an amount equal to the sum of (i) the Initial Cash Payment, (ii) the value of the Initial Stock Consideration on the Closing Date, (iii) the Contingent Cash Amount to the extent actually paid by Buyer pursuant to Section 1.5(a), and (iv) the value of the Contingent Stock Consideration to the extent actually delivered by Buyer pursuant to Section 1.5(b), with the value of such Contingent Stock Consideration for purposes of this definition being equal to the amount set forth under “Value of Buyer Common Stock” in the table included in Section 1.5(b)(i).

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(aaa) "NDA" means a new drug application filed with the FDA pursuant to 21 C.F.R. Part 314 to market a new drug.

(bbb) "Net Sales" means, with respect to any Product for any period, the amount invoiced by Buyer, its Affiliates and their sublicensees with respect to the sale of the Product, less the following deductions, which shall be calculated by Buyer in accordance with GAAP, consistently applied; provided, that the cumulative amount of the following deductions may not exceed nineteen percent (19%) of gross amounts collected with respect to the sale of the Product: (i) normal, customary trade discounts (including volume discounts), credits, chargebacks, reductions and rebates; (ii) actual adjustments for rejections, recalls, outdated products or returns (in each event whether voluntary or required); (iii) credits actually given for wastage replacement, Medicare/Medicaid or other governmental rebates, (iv) annual fees due under Section 9008 of the United States Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-48) (or any successor legislation) allocable to sales of such Product; and (v) normal and customary service fees paid to Third Party distributors and wholesalers for maintaining agreed inventory levels and providing other bona fide services. In addition, Products utilized in clinical trials and Products provided at no cost pursuant to indigent patient, compassionate use and similar programs will not be counted as Net Sales.

(ccc) "Ordinary Course of Business" means the ordinary course of business consistent with past custom and practice.

(ddd) "Permitted Liens" means (i) any Lien for Taxes that are not yet due and payable, (ii) any landlord's, mechanic's, carrier's, workmen's, repairmen's or other similar statutory Lien arising or incurred in the Ordinary Course of Business, (iii) in the case of real property, any minor imperfection of title, condition, easement and reservation of rights (including any easement and reservation of, or rights of others for, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes), encroachment, covenant or restriction, (iv) Liens securing rental payments under any lease arrangements that are secured by the personal property being rented thereby, (v) non-exclusive licenses to Intellectual Property granted to Third Parties in the ordinary course of business or (vi) any other Liens that do not materially detract from the use of the property encumbered thereby.

(eee) "Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, proprietorship, trust, union, association, court, tribunal, agency, government, department, commission, self-regulatory organization, arbitrator, board, bureau, instrumentality, Governmental Authority or other entity, enterprise, authority or business organization.

(fff) "Pivotal Clinical Trial" means a human clinical trial of a Milestone Product, the results of which are, based on written guidance received from the FDA or otherwise, sufficient to support submission of an NDA of such Milestone Product for the applicable indication in the United States.

(ggg) "Post-Closing Tax Period" means (i) any Tax period beginning after the Closing Date and (ii) with respect to any Straddle Period, the portion of such Straddle Period beginning after the Closing Date.

(hhh) "Pre-Closing Tax Period" means (i) any Tax period ending on or before the Closing Date and (ii) with respect to any Straddle Period, the portion of such Straddle Period ending on the Closing Date.

(iii) "Products" means, collectively, (i) NE3107, NE3291, NE3413, NE3789 and any other pharmaceutical compositions owned or controlled by Seller (including all forms of such pharmaceutical compositions under research or in development) in existence as of the date of this Agreement or as of the Closing Date and (ii) any improvements, modifications, derivatives, formulations, combination products and line extensions of such pharmaceutical compositions.

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(jjj) "Product Books and Records" means the Books and Records of Seller relating primarily to the Products, the Business or the Acquired Assets.

(kkk) "Product Materials and Data" means, to the extent relating primarily to the Products, (i) all advertising, promotional, selling, marketing and market research materials; (ii) all data and internal databases used by commercial analytics; (iii) all medical affairs plans and materials; (iv) all employee training materials for the sales force for the Products; (v) documentation regarding any sales force automation systems implemented for the Products (to the extent transferable); (vi) all patient education materials relating to the Products; (vii) all technical and quality documentation with respect to the manufacturing, storage and distribution of the Products, including the Inventories; (viii) all clinical study protocols and investigator brochures for the Products; in each of the foregoing cases ((i) through (viii), (A) in their existing form or format and (B) to the extent existing and controlled by Seller as of the Closing.

(III) "Purchase Price" means, collectively, (i) the Initial Cash Payment, (ii) the Initial Stock Consideration and (iii) the right to receive the Contingent Consideration, if, as and to the extent payable pursuant to Section 1.5.

(mmm) "Representatives" means, with respect to any Person, such Person's officers and directors (or persons holding comparable positions), employees, consultants, independent contractors, subcontractors, leased employees, volunteers, temporary workers, equity holders, accountants, legal and other representatives, agents, executors, heirs, successors and permitted assigns.

(nnn) "Restricted Person" means any Person who is, at that time, an employee, contractor, subcontractor, consultant or sales representative of Buyer, in each case, within the Territory.

(ooo) "Restricted Period" means the period commencing on the Closing Date and ending on the date that is six (6) months following the Closing Date.

(ppp) "Retained Liabilities" means any and all Liabilities (whether known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due and accrued or unaccrued, and whether claims with respect thereto are asserted before or after the

Closing) of Seller, including all Liabilities arising out of or relating to the operation of the Business prior to the Closing (but excluding any such Liabilities that are Retained Liabilities). Notwithstanding anything to the contrary in this Agreement, "Retained Liabilities" (i) shall exclude all Taxes relating to the Business or the Acquired Assets for a Post-Closing Tax Period (as determined in accordance with Section 5.2(b)), and (ii) shall include (A) all Taxes relating to the Business or the Acquired Assets for a Pre-Closing Tax Period (as determined in accordance with Section 5.2(b)) and (B) all Taxes of Seller, including any Taxes attributable to any failure of the transactions contemplated by this Agreement to qualify as a reorganization pursuant to Section 368(a) of the Code.

(qqq) "SEC" means the U.S. Securities and Exchange Commission.

(rrr) "Securities Act" means the Securities Act of 1933, as amended.

(sss) "Seller Benefit Arrangement" means any Benefit Arrangement sponsored or maintained by Seller or with respect to which Seller has or may have any current or future Liability (whether actual, contingent, with respect to any of its assets or otherwise), in each case with respect to any present or former directors, managers, employees, officers, agents or service providers of the Business.

(ttt) "Seller Benefit Plan" means any Benefit Plan for which Seller is the "plan sponsor" (as defined in Section 3(16)(B) of ERISA) or any Benefit Plan Seller maintains to which it is obligated to make payments or has or may have any current or future Liability, in each case with respect to any present or former employees of the Business and any Seller Benefit Plan that meets, purports to meet or is intended to meet the requirements of Section 401(a) of the Code.

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(uuu) "Seller Inbound IP Licenses" means, collectively, each license or agreement pursuant to which Seller Exploits each item of Seller Licensed Intellectual Property (excluding currently-available, off-the-shelf software programs that are part of the Seller Internal Systems and are licensed by Seller pursuant to "shrink wrap" licenses, the annual fees associated with which are less than \$15,000).

(vvv) "Seller Intellectual Property" means all Intellectual Property used in (i) Seller's Exploitation of any of the Products and (ii) Seller's conduct of the Business in all material respects in the manner currently conducted, including all Seller Licensed Intellectual Property and all Seller Owned Intellectual Property.

(www) "Seller Internal Systems" means, with respect to any Person, the software, laboratory equipment, materials and test, calibration and measurement apparatus used by Seller in the Business or to develop, manufacture, fabricate, assemble, provide, distribute, support, maintain or test any of the Products, whether located on the premises of Seller or a third party site.

(xxx) "Seller Licensed Intellectual Property" means all Intellectual Property that is licensed to Seller by any Third Party and that is used or intended to be used in the conduct of, or otherwise primarily related to, the Business.

(yyy) "Seller Material Adverse Change" means any result, occurrence, fact, change, event or effect that, individually or in the aggregate with any other results, occurrences, facts, changes, events and/or effects, has had or would reasonably be expected to have a material adverse effect on (i) the Business or the Acquired Assets, taken as a whole, or (ii) the ability of Seller to consummate the transactions contemplated hereby or to perform its obligations hereunder; provided, however, that, for purposes of clause (i), none of the following, to the extent arising after the date hereof, shall be deemed in itself, or in any combination with another item listed below as an exception, to constitute, and none of the following, to the extent arising after the date hereof, shall be taken into account in determining whether there has been or will be, a Seller Material Adverse Change: (a) any changes in the United States or global economy generally or the U.S. or global capital, credit or financial markets generally, including changes in commercial bank loan interest risks or currency exchange rates; (b) any fluctuations in prices of commodities used or purchased by Seller; (c) any changes generally affecting the industry in which Seller participates; (d) any changes required by GAAP; (e) any changes in applicable Laws; (f) any effect of earthquakes, hurricanes, floods or other natural disasters; (g) any effect attributable to the announcement or pendency of the transactions contemplated by this Agreement or the identity of the Parties or their Affiliates; (h) any effect of acts of war (whether or not declared), armed hostilities, sabotage or terrorism; and (i) any failure by Seller or the Business to meet any projections, estimates or budgets for any period, except, in the case of clauses (a) through (f) and clause (h), to the extent Seller is disproportionately adversely affected thereby as compared to other companies in the industry in which Seller operates.

(zzz) "Seller Outbound IP Licenses" means, collectively, each license, covenant or other agreement pursuant to which Seller has assigned, transferred, licensed, distributed or otherwise granted any right or access to any Person, or covenanted not to assert any right, with respect to any past, existing or future Seller Owned Intellectual Property, excluding any non-exclusive license entered in the Ordinary Course of Business.

(aaaa) "Seller Owned Intellectual Property" means all Intellectual Property owned or purported to be owned by Seller, in whole or in part, used in the conduct of, or otherwise primarily related to, the Business.

(bbbb) "Seller Plan of Liquidation" means a plan of liquidation and dissolution of Seller, pursuant to which Seller will satisfy its liabilities and distribute all of its remaining assets (including the shares of Buyer Common Stock to be issued hereunder) to its equity holder and formally dissolve under applicable Delaware law.

(cccc) "Seller's Knowledge" means the actual knowledge after reasonable inquiry of each Person named on Schedule 3 as to any matter in question.

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(dddd) "Seller Successor" means Seller or, following the liquidation or dissolution of Seller or the assignment of Seller's rights and obligations under this Agreement pursuant to Section 10.3, Seller's successor or assign hereunder.

(eeee) "Sole Shareholder" means NeurMedix, LLC, a Delaware limited liability company, or any other Affiliate of Seller to which all of the issued and outstanding shares of capital stock of Seller are transferred prior to the Closing, as the case may be.

(ffff) "Straddle Period" means any Tax period that includes but does not end on the Closing Date.

(gggg) "Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership or other organization, whether incorporated or unincorporated, (i) of which such Person or one or more of its Subsidiaries owns or controls, directly or indirectly, outstanding shares of capital stock, or other equity interests representing (A) fifty percent (50%) or more of the voting power of all outstanding stock or ownership interests of such entity, (B) the right to receive fifty percent (50%) or more of the dividends or income distributed to the holders of outstanding capital stock or other ownership interests of such entity or (C) the right to receive fifty percent (50%) or more 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, (ii) of which such Person or any other Subsidiary of such Person is a general partner (or otherwise serves in a capacity of comparable authority) or (iii) of which such Person has power to appoint the governing body or over which such Person otherwise has control or approval rights.

(hhhh) "Successor Entity" means the Person (or, if such Person's common stock or equivalent equity security is not quoted or listed on a national securities exchange, such Person's ultimate parent entity) formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been entered into.

(iiii) "Tax" (including with correlative meaning the terms "Taxes" and "Taxable") means any and all taxes, including income, gross receipts, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, excise, real property, personal property, sales, use, transfer, withholding, employment, unemployment, insurance, social security, environmental, workers compensation, payroll, profits, severance, stamp, occupation, windfall profits, franchise, customs duties, escheat, estimated and other charges of any kind whatsoever in the nature of tax and any interest, fines, penalties, assessments or additions to tax imposed with respect to such items or any contest or dispute thereof.

(jjjj) "Tax Return" means any and all reports, returns (including information returns), declarations, or statements relating to Taxes, including any schedule or attachment thereto, including any amendment thereof filed with or submitted to any Governmental Authority in connection with the determination, assessment, collection or payment of Taxes or in connection with the administration, implementation or enforcement of or compliance with any legal requirement relating to any Tax.

(kkkk) "Termination Date" means August 31, 2021.

(llll) "Territory" means the entire world; provided, however, that notwithstanding the foregoing, solely for purposes of the representations and warranties of Seller set forth in Article II, the term "Territory" shall be limited to those jurisdictions in which the Transferred Permits listed in Schedule 1 exist as of Closing.

(mmmm) "Third Party" means any Person other than Seller or any Affiliate of Seller or Buyer or any Affiliate of Buyer.

(nnnn) "Transfer" means any direct or indirect sale, transfer, gift, donation, assignment, establishment or increase of a put equivalent position or liquidation with respect to, entry into any swap or other arrangement that transfers to another in whole or in part any of the economic consequences of ownership of any security whether any such transaction is to be settled by delivery of such securities (in cash or otherwise), or other disposition, whether similar or dissimilar to those previously enumerated, whether voluntary or involuntary, and including, but not limited to, any disposition by operation of law, by court order, by judicial process, or by foreclosure, levy or attachment.

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(oooo) "Transaction Documents" means this Agreement and each of the other agreements and instruments contemplated hereby to be executed on the date hereof or on the Closing Date by Seller, Buyer and/or any of their respective Affiliates. The Transaction Documents include the instruments of conveyance described in Section 1.4(a)(i), the Instrument of Assumption described in Section 1.4(b)(iii), the Seller FDA Letter, the Buyer FDA Letter and the Registration Rights Agreement.

(pppp) "United States" means the United States of America and its territories and possessions.

(qqqq) "WARN Act" means the Worker Adjustment and Retraining Notification Act of 1988.

9.2 Accounting Terms. Except as otherwise expressly provided in this Agreement, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered hereunder shall be prepared, in accordance with GAAP.

9.3 Usage. The defined terms herein shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references herein to "Articles", "Sections" and "Exhibits" shall be deemed to be references to Articles and Sections of and Exhibits to this Agreement unless the context shall otherwise require. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "predecessor" shall, when used with respect to any Person, mean such Person's predecessors and any other Person for whose conduct such Person is or may be responsible. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise expressly provided herein, any statute defined or referred to herein or in any agreement or instrument that is referred to herein means such statute as from time to time amended, modified or supplemented, including succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. When reference is made in this Agreement to information that has been "made available" to Buyer, that shall consist of only the information that was (a) contained in Seller's electronic data room no later than 5:00 p.m., Eastern time, on the second (2nd) Business Day prior to the date of this Agreement or (b) delivered to Buyer or its counsel. Unless otherwise expressly provided, wherever the consent of any Person is required or permitted

**ARTICLE X
GENERAL**

10.1 Notices. Any notice, request, claim, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given if delivered personally or sent by electronic mail or by nationally recognized overnight courier service, as follows:

(a) If to Buyer:

BioVie Inc.
2120 Colorado Avenue, Suite 230
Santa Monica, CA 90404
Attention: Corporate Secretary

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(b) If to Seller:

NeurMedix, Inc.
6165 Greenwich Drive, Suite 150
San Diego, CA 92122
Attention: Corporate Secretary

or to such other address as the person to whom notice is to be given may have specified in a notice duly given to the sender as provided herein. Such notice, request, claim, demand, waiver, consent, approval or other communication shall be deemed to have been given (i) as of the date so delivered or emailed, (ii) one (1) Business Day after it is sent for next Business Day delivery via a reputable nationwide overnight courier service and (iii) if given by any other means, shall be deemed given only when actually received by the addressees.

10.2 Entire Agreement. This Agreement (which includes the Seller Disclosure Schedule, the other Schedules hereto and the Exhibits hereto), the other Transaction Documents, the Confidentiality Agreement and all other agreements contemplated hereby sets forth the entire understanding of the Parties with respect to the transactions contemplated hereby. Any and all previous agreements and understandings between or among the Parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement. Each of the Seller Disclosure Schedule, the other Schedules and the Exhibits is incorporated herein by this reference and expressly made a part hereof, and all terms used in the Seller Disclosure Schedule, or any Schedule or Exhibit shall have the meaning ascribed to such term in this Agreement.

10.3 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Except as set forth in Section 5.4(c) and this Section 10.3, this Agreement and the rights of the Parties hereunder may not be assigned by either Party without the prior written consent of the other Party (except by operation of Law); provided that, notwithstanding the foregoing, Buyer may assign any or all of its rights, obligations or Liabilities hereunder to any Person that merges with or acquires all or substantially all of the stock of Buyer or substantially all of the assets of Buyer; provided further that any such assignment by Buyer shall not relieve Buyer of its obligations under this Agreement. In addition, notwithstanding anything to the contrary in this Agreement, Seller may assign any or all of its rights under this Agreement with respect to any obligations of Buyer required to be performed after the Closing (including with respect to the Contingent Consideration or any other payments that may be due to Seller from and after the Closing in accordance with this Agreement (including the rights to receive such payments and/or to enforce the terms hereof relating to such payments) to any of its Affiliates (which Affiliate shall thereafter be deemed to be a Seller Successor for all purposes hereunder). Any attempted assignment in violation of the provisions hereof shall be null and void and have no effect.

10.4 Counterparts; Facsimile Signatures. This Agreement may be executed in multiple counterparts and any Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. For purposes of this Agreement, facsimile signatures shall be deemed originals, and the Parties agree to exchange original signatures as promptly as possible.

10.5 Expenses and Fees. Except as otherwise expressly provided herein, whether or not the transactions contemplated hereby are consummated, all fees and expenses incurred in connection with this Agreement or any of the transactions contemplated by this Agreement shall be paid by the party incurring or required to incur such fees or expenses.

10.6 Governing Law. This Agreement (and any claims or disputes arising out of or related hereto or the transactions contemplated hereby or to the inducement of any party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed in all respects, including validity, interpretation, and effect, by and construed in accordance with the internal Laws of the State of Delaware (including in respect of the statute of limitations or other limitations period applicable to any claim, controversy or dispute) without giving effect to any choice or conflict of Law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdictions other than those of the State of Delaware.

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10.7 Submission to Jurisdiction. Each of the Parties to this Agreement (a) consents to submit itself to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, New Castle County, or, if that court does not have jurisdiction, a federal court sitting in Wilmington, Delaware in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this

Agreement, (b) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, (c) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any other court, and (e) waives any right it may have to a trial by jury with respect to any action or proceeding arising out of or relating to this Agreement. Each of the Parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party hereto may make service on another Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 10.1. Nothing in this Section 10.7, however, shall affect the right of any Party to serve legal process in any other manner permitted by Law.

10.8 Dispute Resolution. Except as otherwise expressly provided in Section 5.3(e), in the event of any dispute, claim or controversy (a "Dispute") relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Section 10.8, the Parties shall submit such Dispute to JAMS for mediation. The location of the mediation shall be New York, New York. Each Party shall provide to JAMS and the other Party a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. If no mediator has been agreed upon by all the disputing Parties within ten (10) days submission of the Dispute to JAMS for mediation, then either Party may request that JAMS appoint a mediator. All communications made in connection with this clause shall be confidential and shall not be referred to, or admissible for any purpose, in any subsequent proceedings. If the Dispute has not been resolved within ninety (90) days after receipt by a Party of the notice in accordance with this Section 10.8, then, on the request of any Party, the Dispute shall be referred to litigation in a court of competent jurisdiction in accordance with Section 10.6 and Section 10.7.

10.9 Severability. If any provision of this Agreement (including those contained in Section 5.3) or the application thereof to any Person or circumstances is held invalid or unenforceable in any jurisdiction, the remainder hereof, and the application of such provision to such Person or circumstances in any other jurisdiction, shall not be affected thereby, and to this end the provisions of this Agreement shall be severable.

10.10 Amendment; Waiver. This Agreement may be amended by the Parties at any time by execution of an instrument in writing signed on behalf of each of the Parties. Any extension or waiver by any Party of any provision hereto shall be valid only if set forth in an instrument in writing signed on behalf of such Party.

10.11 Absence of Third-Party Beneficiary Rights. No provision of this Agreement is intended, nor will be interpreted, to provide or to create any third party beneficiary rights or any other rights of any kind in any client, customer, Affiliate, stockholder, officer, director, employee or partner of any Party or any other Person, other than the Parties, the Buyer Indemnified Parties, the Seller Indemnified Parties and the Seller Successor, as set forth in Section 10.3.

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10.12 Mutual Drafting. This Agreement is the mutual product of the Parties, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of each of the Parties, and shall not be construed for or against any Party.

10.13 Further Representations. Each Party acknowledges and represents that it has been represented by its own legal counsel in connection with the transactions contemplated hereby, with the opportunity to seek advice as to its legal rights from such counsel. Each Party further represents that it is being independently advised as to the tax consequences of the transactions contemplated hereby and is not relying on any representation or statements made by any other Party as to such tax consequences.

10.14 Currency. Whenever any payment hereunder is to be paid in "cash", payment shall be made in the legal tender of the United States and the method for payment shall be by wire transfer of immediately available funds. In the event there is any need to convert U.S. dollars into any foreign currency, or vice versa, for any purpose under this Agreement the exchange rate shall be that published by the Wall Street Journal on the date an obligation is paid (or if the Wall Street Journal is not published on such date, the first date thereafter on which the Wall Street Journal is published).

10.15 Specific Performance. Except as set forth in Section 8.6, the rights and remedies of the Parties shall be cumulative (and not alternative). The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions of this Agreement in addition to any other remedy to which they are entitled to at law or in equity, in each case without the requirement of posting any bond or other type of security.

10.16 Guaranty. Guarantor hereby guarantees to Buyer and its successors and assigns the prompt payment of all payment obligations of Seller arising under this Agreement (collectively, the "Guaranteed Obligations"), in full when due, in accordance with their terms (the "Guaranty"). Guarantor hereby further agrees that if any of the Guaranteed Obligations requiring payment are not paid in full when due by Seller, Guarantor will promptly pay the same, without any demand or notice whatsoever. This Guaranty is a guarantee of payment and not of collection.

[Signature page follows]

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IN WITNESS WHEREOF, the Parties have executed this Asset Purchase Agreement as of the day and year first written above.

BioVie Inc.

By: /s/ Michael Sherman

Name: Michael Sherman

Title: Director

NeurMedix, Inc.

By: /s/ Terren S. Peizer

Name: Terren S. Peizer

Title: Chief Executive Officer

Acuitas Group Holdings, LLC, solely for purposes of Section 10.16

By: /s/ Terren S. Peizer

Name: Terren S. Peizer

Title: Managing Member

[Signature page to Asset Purchase Agreement]
