

AGREEMENT AND PLAN OF MERGER

among:

MIRAMAR LABS, INC.,

a Delaware corporation;

SIENTRA, INC.,

a Delaware corporation; and

DESERT ACQUISITION CORPORATION,

a Delaware corporation

Dated as of June 11, 2017

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (“*Agreement*”) is made and entered into as of June 11, 2017, by and among **SIENTRA, INC.**, a Delaware corporation (“*Parent*”); **DESERT ACQUISITION CORPORATION**, a Delaware corporation and a wholly owned subsidiary of Parent (“*Purchaser*”); and **MIRAMAR LABS, INC.**, a Delaware corporation (the “*Company*”). Certain capitalized terms used in this Agreement are defined in **Exhibit A**.

RECITALS

A. Parent has agreed to cause Purchaser to commence a cash tender offer (as it may be amended from time to time as permitted under this Agreement, the “*Offer*”) to acquire all of the outstanding shares of Company Common Stock (the “*Shares*”) for (i) \$0.3149 per Share, in cash, without interest (such amount, or any greater amount per Share paid pursuant to the Offer, as such amount may be adjusted pursuant to Section 1.1(b), the “*Cash Portion*”), and (ii) the contractual right pursuant to the Contingent Value Rights Agreement in the form attached hereto as *Annex II* (as it may be amended from time to time, the “*CVR Agreement*”), to receive one or more contingent payments upon the achievement of certain milestones as set forth in the CVR Agreement, without interest (the “*CVR Portion*”, and together with the Cash Portion, the “*Offer Price*”), subject to any applicable withholding and upon the terms and subject to the conditions of this Agreement.

B. Following the consummation of the Offer, upon the terms and conditions set forth herein, Purchaser will be merged with and into the Company (the “*Merger*”), with the Company continuing as the surviving corporation in the Merger (the “*Surviving Corporation*”), on the terms and subject to the conditions set forth in this Agreement, whereby, except as expressly provided in Section 2.5, (i) each issued and outstanding Share not owned by Parent, Purchaser, the Company or any Subsidiary of the Company as of the Effective Time shall be converted into the right to receive the Offer Price, in cash, without interest and (ii) the Company shall become a wholly owned Subsidiary of Parent as a result of the Merger.

C. The Board of Directors of the Company has (i) determined that this Agreement and the Transactions, including the Offer and the Merger, are advisable to, and in the best interest of, the Company and its stockholders, (ii) agreed that the Merger Agreement shall be subject to Section 251(h) of the DGCL, (iii) approved the execution, delivery and performance by the Company of this Agreement and the consummation of the Transactions, including the Offer and the Merger and (iv) unanimously resolved to recommend that the stockholders of the Company tender their shares to Purchaser pursuant to the Offer (the “*Company Board Recommendation*”).

D. The Board of Directors of each of Parent and Purchaser have approved this Agreement and declared it advisable for Parent and Purchaser, respectively, to enter into this Agreement.

E. Each of Parent and the Company acknowledges and agrees that the Merger shall be governed by, and effected pursuant to, Section 251(h) of the DGCL and shall, subject to satisfaction of the conditions set forth in this Agreement, be consummated immediately following the Offer Acceptance Time.

F. Concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Parent and Purchaser entering into this Agreement, certain holders of the Shares (the “*Principal Stockholders*”) have entered into tender and support agreements, dated as of the date hereof, in substantially the form set forth in **Annex III**, pursuant to which, among other things, each of the Principal Stockholders has agreed to tender his, her or its Shares to Purchaser in the Offer (the “*Tender Agreements*”).

AGREEMENT

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

SECTION 1. THE OFFER

1.1 The Offer.

(a) **Commencement of the Offer.** Provided that this Agreement shall not have been terminated in accordance with Section 8, as promptly as practicable after the date of this Agreement but in no event more than ten (10) business days after the date of this Agreement, Purchaser shall (and Parent shall cause Purchaser to) commence (within the meaning of Rule 14d -2 under the Exchange Act) the Offer.

(b) **Terms and Conditions of the Offer.** The obligations of Purchaser to, and of Parent to cause Purchaser to, accept for payment, and pay for, any Shares validly tendered (and not validly withdrawn) pursuant to the Offer are subject to the terms and conditions of this Agreement, including the prior satisfaction of the Minimum Condition and the satisfaction or waiver of the other conditions set forth in **Annex I** (collectively, the “**Offer Conditions**”). The Offer shall be made by means of an offer to purchase (the “**Offer to Purchase**”) that contains the terms set forth in this Agreement, including the Minimum Condition and the other Offer Conditions. Purchaser expressly reserves the right to (i) increase the Offer Price, (ii) waive any Offer Condition and (iii) make any other changes in the terms and conditions of the Offer not inconsistent with the terms of this Agreement; *provided, however*, that without the prior written consent of the Company, Purchaser shall not (A) decrease the Cash Portion or amend the terms of the CVR Agreement, (B) change the form of consideration payable in the Offer, (C) decrease the maximum number of Shares sought to be purchased in the Offer, (D) impose conditions or requirements to the Offer in addition to the Offer Conditions, (E) amend or modify any of the Offer Conditions in a manner that adversely affects any holder of Shares in its capacity as such or (F) change or waive the Minimum Condition. The Offer may not be withdrawn prior to the Expiration Date (or any rescheduled Expiration Date) of the Offer, unless this Agreement is terminated in accordance with Section 8.

(c) **Expiration and Extension of the Offer.** The Offer shall initially be scheduled to expire at 8:00 a.m. Eastern Time, on the twenty-first (21st) business day following the Offer Commencement Date, determined as set forth in Rule 14d-1(g)(3) and Rule 14e-1(a) under the Exchange Act (unless otherwise agreed to in writing by Parent and the Company) (the “**Initial Expiration Date**,” such date or such subsequent date and time to which the expiration of the Offer is extended in accordance with the terms of this Agreement, the “**Expiration Date**”). Notwithstanding anything to the contrary contained in this Agreement, but subject to the Parties’ respective termination rights under Section 8: (i) if, as of the scheduled Expiration Date, any Offer Condition is not satisfied and has not been waived, Purchaser shall extend the Offer on one or more occasions, for an additional period of up to ten (10) business days per extension, to permit such Offer Condition to be satisfied; and (ii) Purchaser shall extend the Offer from time to time for any period required by any Legal Requirement, any interpretation or position of the SEC, the staff thereof or the OTC applicable to the Offer; *provided, however*, that in no event shall Purchaser be required to extend the Offer beyond the valid termination of this Agreement in compliance with Section 8. Purchaser shall not terminate the Offer prior to any scheduled Expiration Date without the prior written consent of the Company except in the event that this Agreement is terminated pursuant to Section 8.

(d) **Termination of Offer.** In the event that this Agreement is terminated pursuant to Section 8.1, Purchaser shall (and Parent shall cause Purchaser to) promptly (and, in any event, within two (2) business days of such termination), irrevocably and unconditionally terminate the Offer and shall not acquire any Shares pursuant to the Offer. If the Offer is terminated or withdrawn by Purchaser, Purchaser

shall promptly return, and shall cause any depository acting on behalf of Purchaser to return, in accordance with applicable Legal Requirements, all tendered Shares to the registered holders thereof.

(e) **Offer Documents.** On the date of commencement of the Offer (within the meaning of Rule 14d-2 under the Exchange Act), Parent and Purchaser shall (i) file with the SEC a tender offer statement on Schedule TO with respect to the Offer (together with all amendments and supplements thereto and including exhibits thereto, the “*Schedule TO*”) that will contain or incorporate by reference the Offer to Purchase and form of the related letter of transmittal and (ii) cause the Offer to Purchase and related documents to be disseminated to holders of Shares. Parent and Purchaser agree that they shall cause the Schedule TO and all exhibits, amendments or supplements thereto (which together constitute the “*Offer Documents*”) filed by either Parent or Purchaser with the SEC to comply in all material respects with the Exchange Act and the rules and regulations thereunder and other applicable Legal Requirements. The information contained in the Offer Documents, as of such Offer Document’s respective date, shall not be false or misleading in any material respect, and each of Parent, Purchaser and the Company agrees to promptly correct any information provided by it for use in the Offer Documents if and to the extent that such information shall have become false or misleading in any material respect, and Parent further agrees to take all steps necessary to cause the Offer Documents as so corrected to be filed with the SEC and to be disseminated to holders of Shares, in each case as and to the extent required by applicable federal securities laws. The Company shall promptly furnish or otherwise make available to Parent and Purchaser or Parent’s legal counsel all information concerning the Company and the Company’s stockholders that may be required under applicable Legal Requirements and/or in connection with any action contemplated by this Section 1.1 (e). The Company and its counsel shall be given reasonable opportunity to review and comment on the Offer Documents prior to the filing thereof with the SEC (and Parent and Purchaser shall consider any such comments in good faith). Parent and Purchaser agree to provide the Company and its counsel with any comments Parent, Purchaser or their counsel may receive from the SEC or its staff with respect to the Offer Documents promptly after receipt of such comments. Each of Parent and Purchaser shall respond promptly to any comments of the SEC or its staff with respect to the Offer Documents or the Offer.

(f) **Funds.** Subject to Section 8.3, Parent shall cause to be provided to Purchaser all of the funds necessary to purchase the Shares that Purchaser becomes obligated to purchase pursuant to the Offer, and shall cause Purchaser to perform, on a timely basis, all of Purchaser’s obligations under this Agreement. Parent and Purchaser shall, and each of Parent and Purchaser shall ensure that all of their respective controlled Affiliates shall, tender any Shares held by them into the Offer.

(g) **CVR Agreement.** Parent and the Rights Agent shall, at or prior to the Offer Acceptance Time, duly authorize, execute and deliver the CVR Agreement.

1.2 Company Actions.

(a) **Schedule 14D-9.** As promptly as practicable on the day that the Offer is commenced, following the filing of the Schedule TO, the Company shall file with the SEC and disseminate to holders of Shares, in each case as and to the extent required by applicable federal securities laws and Section 262 of the DGCL, a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits, amendments or supplements thereto, the “*Schedule 14D-9*”) that, subject to Section 6.1(b), shall reflect the Company Board Recommendation and include a notice of appraisal rights in accordance with Section 262 of the DGCL. Prior to such filing and dissemination the Company shall set the Stockholder List Date as the record date for the purpose of receiving the notice required by Section 262(d)(2) of the DGCL. The Company agrees that it will cause the Schedule 14D-9 to comply in all material respects with the Exchange Act and other applicable Legal Requirements and for the notice to comply with Section 262

of the DGCL. The information contained in the Schedule 14D-9, as of its date, shall not be false or misleading in any material respect and each of Parent, Purchaser and the Company agrees to respond promptly to any comments of the SEC or its staff and to promptly correct any information provided by it for use in the Schedule 14D-9 if and to the extent that such information shall have become false or misleading in any material respect, and the Company further agrees to take all steps necessary to cause the Schedule 14D-9 as so corrected to be filed with the SEC and to be disseminated to holders of Shares, in each case as and to the extent required by applicable federal securities laws. Parent and its counsel shall be given reasonable opportunity to review and comment on the Schedule 14D-9 and any amendment thereto prior to the filing thereof with the SEC (and the Company shall consider any such comments in good faith). Unless the Company's Board of Directors has made a Company Adverse Change Recommendation, the Company agrees to provide Parent and its counsel with any comments the Company or its counsel may receive from the SEC or its staff with respect to the Schedule 14D-9 promptly after receipt of such comments. The Company shall respond promptly to any comments of the SEC or its staff with respect to the Schedule 14D-9.

(b) Stockholder Lists. The Company shall promptly furnish Parent with a list of its stockholders, mailing labels and any available listing or computer file containing the names and addresses of all record holders of Shares and lists of securities positions of Shares held in stock depositories, in each case accurate and complete as of the most recent practicable date, and shall provide to Parent such additional information (including updated lists of stockholders, mailing labels and lists of securities positions) and such other assistance as Parent may reasonably request in connection with the Offer and the Merger. (The date of the list used to determine the Persons to whom the Offer Documents and Schedule 14D-9 are first disseminated, the "**Stockholder List Date**.") Parent and Purchaser and their agents shall hold in confidence the information contained in any such labels, listings and files, shall use such information only in connection with the Offer and the Merger and, if this Agreement shall be terminated, shall, upon request, deliver, and shall use their reasonable efforts to cause their agents to deliver, to the Company (or destroy) all copies and any extracts or summaries from such information then in their possession or control.

SECTION 2. MERGER TRANSACTION

2.1 Merger of Purchaser into the Company. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with Section 251(h) of the DGCL, at the Effective Time, the Company and Parent shall consummate the Merger, whereby Purchaser shall be merged with and into the Company, and the separate existence of Purchaser shall cease. The Company will continue as the Surviving Corporation.

2.2 Effect of the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL.

2.3 Closing; Effective Time.

(a) Unless this Agreement shall have been terminated pursuant to Section 8, and unless otherwise mutually agreed in writing between the Company, Parent and Purchaser, the consummation of the Merger (the "**Closing**") shall take place at the offices of Cooley LLP, 1333 2nd Street, Suite 400, Santa Monica, CA 90401, at 8:30 a.m. Eastern Time on the same date as the Offer Acceptance Time and immediately following the Offer Acceptance Time except that if the condition set forth in Section 7.1 shall not be satisfied or waived by such date in which case no later than the first business day on which the conditions set forth in Section 7.1 are satisfied or waived. The date on which the Closing occurs is referred to in this Agreement as the "**Closing Date**."

(b) Subject to the provisions of this Agreement, as soon as practicable on the Closing Date, the Company and Purchaser shall file or cause to be filed a certificate of merger with the Secretary of State of the State of Delaware with respect to the Merger, in such form as required by, and executed and acknowledged in accordance with, the relevant provisions of the DGCL. The Merger shall become effective upon the date and time of the filing of such certificate of merger with the Secretary of State of the State of Delaware or such later date and time as is agreed upon in writing by the parties hereto and specified in the certificate of merger (such date and time, the “*Effective Time*”).

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

(a) the Certificate of Incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time to conform to Exhibit B;

(b) the Bylaws of the Surviving Corporation shall be amended and restated as of the Effective Time to conform to the Bylaws of Purchaser as in effect immediately prior to the Effective Time; and

(c) the directors and officers of the Surviving Corporation immediately after the Effective Time shall be the respective individuals who are the directors and officers of Purchaser immediately prior to the Effective Time.

2.5 Conversion of Shares.

(a) At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Purchaser, the Company or any stockholder of the Company:

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

(ii) any Shares then held by Parent, Purchaser or any other wholly owned Subsidiary of Parent shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(iii) any Shares held by any wholly owned Subsidiary of the Company shall not be cancelled, shall remain outstanding, and shall not be entitled to receive the Merger Consideration described in clause “(iv)” below;

(iv) except as provided in clauses “(i)”, “(ii)” and “(iii)” above and subject to Section 2.5(b), each Share then outstanding (other than any Dissenting Shares, as defined below) shall be converted into the right to receive (A) the Cash Portion plus (B) the CVR Portion (the “*Merger Consideration*”), subject to any applicable withholding, and each holder of a Certificate or a Book-Entry Share shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration upon surrender of such Certificate or Book-Entry Share in accordance with Section 2.6; and

(v) each share of the common stock, \$0.01 par value per share, of Purchaser then outstanding shall be converted into one share of common stock of the Surviving Corporation.

(b) If, between the date of this Agreement and the Effective Time, the outstanding Shares are changed into a different number or class of shares by reason of any stock split, division or subdivision of shares, stock dividend, reverse stock split, consolidation of shares, reclassification or other similar transaction, then the Merger Consideration shall be appropriately adjusted.

2.6 Surrender of Certificates; Stock Transfer Books.

(a) Prior to the Effective Time, Parent shall designate a bank or trust company reasonably acceptable to the Company to act as agent (the “*Depository Agent*”) for the holders of shares of Company Common Stock to receive the funds to which such holders shall become entitled pursuant to Section 1.1(b) and to act as agent (the “*Paying Agent*”) for the holders of shares of Company Common Stock to receive the funds to which such holders shall become entitled pursuant to Section 2.5 and to act as rights agent (in such capacity, the “*Rights Agent*”) under the CVR Agreement. At or prior to the Effective Time, Parent shall deposit, or shall cause to be deposited, with the Depository Agent cash sufficient to make payment of the aggregate Cash Portion payable pursuant to Section 1.1(b) and with the Paying Agent aggregate cash sufficient to make payment of the aggregate Cash Portion payable pursuant to Section 2.5 (together, the “*Payment Fund*”); provided that Parent shall not be required to deposit the funds related to the CVR Portion with the Rights Agent unless and until such deposit is required pursuant to the terms of the CVR Agreement. The Payment Fund shall not be used for any other purpose. The Payment Fund shall be invested by the Paying Agent as directed by the Surviving Corporation or Parent; *provided*, that such investments shall be in obligations of or guaranteed by the United States of America in commercial paper obligations rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, respectively, in certificates of deposit, bank repurchase agreements or banker's acceptances of commercial banks with capital exceeding \$1 billion, or in money market funds having a rating in the highest investment category granted by a recognized credit rating agency at the time of acquisition or a combination of the foregoing and, in any such case, no such instrument shall have a maturity exceeding three (3) months.

(b) Promptly after the Effective Time (but in no event later than five (5) business days thereafter), the Surviving Corporation shall cause to be mailed to each Person who was, at the Effective Time, a holder of record of the shares of Company Common Stock entitled to receive the Merger Consideration pursuant to Section 2.5 (including in connection with an exercise or deemed exercise of a Company Warrant pursuant to Section 2.8) a form of letter of transmittal (which shall be in reasonable and customary form and shall specify that delivery shall be effected, and risk of loss and title to the certificates evidencing such shares (the “*Certificates*”) shall pass, only upon proper delivery of the Certificates (or effective affidavits of loss in lieu thereof) to the Paying Agent) and instructions for use in effecting the surrender of the Certificates or Book-Entry Shares pursuant to such letter of transmittal. Upon surrender to the Paying Agent of Certificates (or effective affidavits of loss in lieu thereof) or Book-Entry Shares, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to such instructions, the holder of such Certificates or Book-Entry Shares shall be entitled to receive in exchange therefor the Merger Consideration for each share of Company Common Stock formerly evidenced by such Certificates or Book-Entry Shares, and such Certificates and Book-Entry Shares shall then be canceled. No interest shall accrue or be paid on the Cash Portion payable upon the surrender of any Certificates or Book-Entry Shares for the benefit of the holder thereof. If the payment of any Merger Consideration is to be made to a Person other than the Person in whose name the surrendered Certificates formerly evidencing the shares of Company Common Stock is registered on the stock transfer books of the Company, it shall be a condition of payment that the Certificate so surrendered shall be endorsed properly or otherwise be in proper form for transfer and that the Person requesting such payment shall have paid all transfer and other similar Taxes required by reason of the payment of the Merger Consideration to a Person other than the registered holder of the Certificate surrendered, or shall have established to the

satisfaction of the Surviving Corporation that such Taxes either have been paid or are not applicable. None of the Parent, Purchaser and the Surviving Corporation shall have any liability for the transfer and other similar Taxes described in this Section 2.6(b) under any circumstance. Payment of the applicable Merger Consideration with respect to Book-Entry Shares shall only be made to the Person in whose name such Book-Entry Shares are registered.

(c) At any time following six (6) months after the Effective Time, the Surviving Corporation shall be entitled to require the Paying Agent to deliver to it any funds which had been made available to the Paying Agent and not disbursed to holders of Certificates or Book-Entry Shares (including, all interest and other income received by the Paying Agent in respect of all funds made available to it), and, thereafter, such holders shall be entitled to look to the Surviving Corporation (subject to abandoned property, escheat and other similar Legal Requirements) only as general creditors thereof with respect to the Merger Consideration that may be payable upon due surrender of the Certificates or Book-Entry Shares held by them. Notwithstanding the foregoing, neither the Surviving Corporation nor the Paying Agent shall be liable to any holder of Certificates or Book-Entry Shares for the Merger Consideration delivered in respect of such share to a public official pursuant to any abandoned property, escheat or other similar Legal Requirements. Any amounts remaining unclaimed by such holders at such time at which such amounts would otherwise escheat to or become property of any Governmental Body shall become, to the extent permitted by applicable Legal Requirements, the property of the Surviving Corporation or its designee, free and clear of all claims or interest of any Person previously entitled thereto.

(d) At the close of business on the Closing Date, the stock transfer books of the Company with respect to the shares of Company Common Stock shall be closed and thereafter there shall be no further registration of transfers of shares of Company Common Stock on the records of the Company. From and after the Effective Time, the holders of the shares of Company Common Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares except as otherwise provided herein or by applicable Legal Requirements.

(e) If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such Person of a bond, in such reasonable amount as Parent may direct, as indemnity against any claim that may be made against it with respect to such Certificate (which shall not exceed the Merger Consideration payable with respect to such Certificate), the Paying Agent will pay (less any amounts entitled to be deducted or withheld pursuant to Section 2.11), in exchange for such lost, stolen or destroyed Certificate, the applicable Merger Consideration to be paid in respect of the shares of Company Common Stock formerly represented by such Certificate, as contemplated by this Section 2.

2.7 Dissenters' Rights. Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock outstanding immediately prior to the Effective Time, and held by holders who are entitled to appraisal rights under Section 262 of the DGCL and have properly exercised and perfected their respective demands for appraisal of such shares in the time and manner provided in Section 262 of the DGCL and, as of the Effective Time, have neither effectively withdrawn nor lost their rights to such appraisal and payment under the DGCL (the "*Dissenting Shares*"), shall not be converted into the right to receive Merger Consideration, but shall, by virtue of the Merger, be entitled to only such consideration as shall be determined pursuant to Section 262 of the DGCL; *provided, that* if any such holder shall have failed to perfect or shall have effectively withdrawn or lost such holder's right to appraisal and payment under the DGCL, such holder's shares of Company Common Stock shall be deemed to have been converted as of the Effective Time into the right to receive the Merger Consideration (less any amounts entitled to be deducted or withheld pursuant to Section 2.11), and such shares shall not be deemed to be Dissenting Shares. The Company shall

not, without the prior written consent of Parent (not to be unreasonably withheld, conditioned or delayed), make any payment with respect to, or settle or offer to settle, any such demands. The Company shall provide each of the holders of Company Common Stock as of the record date for the purpose of receiving the notice required by Section 262(d) of the DGCL with the notice contemplated thereby as part of the Schedule 14D-9.

2.8 Treatment of Company Options and Warrants; Retention Plan.

(a) As of the Effective Time, each Company Option that is then outstanding and unexercised, whether or not vested, shall be cancelled. Further, with respect to those Persons holding such cancelled Company Options with an exercise price per Share that is less than the Cash Portion (each, an “***In-the-money Option***”), each such cancelled In-the-money Option shall be converted into the right to receive (i) cash in an amount equal to (A) the total number of Shares subject to such Company Option immediately prior to the Effective Time (without regard to vesting) multiplied by (B) the excess, if any, of (x) the Cash Portion over (y) the exercise price payable per Share under such Company Option, without interest (the “***Closing Option Payment***”), plus (ii) the right to receive the CVR Portion for each Share subject to such In-the-money Option (without regard to vesting), which amount shall be paid in accordance with Section 2.8(d). No holder of a cancelled Company Option that has an exercise price per Share that is equal to or greater than the Cash Portion (an “***Out-of-the-money Option***”) shall be entitled to any payment with respect to such cancelled Company Option before or after the Effective Time. The Company shall accelerate (contingent upon the Effective Time) the vesting of each unvested Company Option on the date that is at least ten (10) calendar days prior to the Effective Time (such date, the “***Acceleration Date***”) and, for a period of at least five (5) calendar days following the Acceleration Date, allow each holder of a Company Option to exercise all or a portion of the Company Option, effective immediately prior to, and contingent upon, the Effective Time. Prior to the Closing, the Company shall mail or deliver to each holder of Company Options a letter describing the treatment of and payment, if applicable, for the Company Options that are outstanding and unexercised immediately prior to the Effective Time pursuant to Section 2.8(a), and provide instructions for exercise and obtaining payment, if applicable, for any such Company Options, as applicable, which shall be conditioned on such holder of Company Options executing an agreement (an “***Optionholder Agreement***”) providing for a release of claims in form and substance reasonably satisfactory to Parent.

(b) As of the Effective Time, each Participant shall have the right to receive (i) the portion of his or her Bonus Amount under the Retention Plan (as each such term is defined in the Retention Plan) due and payable at the Closing (the “***Closing Retention Plan Payments***”) plus (ii) the right to receive a CVR Portion, which amount shall be paid in accordance with the Retention Plan and Section 2.8(d). Parent’s obligation to pay, or cause the Surviving Corporation to pay, such Closing Retention Plan Payment and CVR Portion to each such Participant shall be conditioned on such Participant executing a Participation Agreement (as each such term is defined in the Retention Plan).

(c) Prior to the Initial Expiration Date, the Company shall satisfy all of its notification requirements under the terms of each outstanding and unexercised Company Warrant that relate to or that are otherwise triggered by the Transactions. All Shares issued to holders of Company Warrants pursuant to an exercise or deemed exercise of Company Warrants shall be made through Book-Entry Shares.

(d) At or prior to the Effective Time, Parent shall deposit (or cause to be deposited) with the Company, cash equal to the aggregate amount of (i) the Closing Option Payments owed to all holders of In-the-money Options and (ii) the Closing Retention Plan Payments owed to all Participants. No later than the second Company payroll date following the Effective Time (such date, the “***Payroll Date***”), the applicable holders of In-the-money Options and the Participants shall receive a payment from the Company or the Surviving Corporation, through its payroll system or payroll provider (with respect to Employee

Options and Bonus Amounts) or through its accounts payable system (with respect to Non-Employee Options), in respect of the Closing Option Payments (net of applicable withholding) required to be paid to such holders in respect of such In-the-money Options that are cancelled and converted pursuant to Section 2.8(a) or to such Participants in respect of Closing Retention Plan Payments pursuant to Section 2.8(c). If a Milestone (as defined in the CVR Agreement) is attained, then Parent shall deposit (or cause to be deposited) with the Company or the Surviving Corporation, not later than the date of delivery of the Milestone Compliance Certificate (as defined in the CVR Agreement) cash equal to the aggregate amount of (i) the CVR Portion with respect to such Milestone that is payable to all holders of In-the-money Options and (ii) the CVR Portion with respect to such Milestone that is payable to all Participants, and no later than the second Company or Surviving Corporation payroll date following such delivery of the Milestone Compliance Certificate each applicable holder of an In-the-money Option and each Participant shall receive a payment (net of applicable withholding) from the Company or the Surviving Corporation, through its payroll system or payroll provider (with respect to Employee Options and Bonus Amounts) or through its accounts payable system (with respect to Non-Employee Options), in respect of the CVR Portion payable to such applicable holder of an In-the-money Option or such Participant.

2.9 Loan Payoff. Prior to the Closing, the Company shall satisfy all notification and consent requirements, as applicable, under the terms of the SVB Loan Agreement. No less than five business days prior to the Closing Date, the Company shall obtain a payoff letter (the “*Payoff Letter*”) for the SVB Loan Agreement, which Payoff Letter shall (a) provide the dollar amount of all Indebtedness required to be paid under the SVB Loan Agreement in order to fully and finally pay off such Indebtedness as of the Closing (the “*Payoff Amount*”) and (b) indicate that the Acquired Corporations shall be discharged from any and all obligations pursuant to such Indebtedness (and any documentation in connection therewith shall terminate) and that all Encumbrances securing the Indebtedness shall be released from and after the Closing Date automatically upon payment of the Payoff Amount. Parent and/or Purchaser shall pay the Payoff Amount in full on the Closing Date on behalf of the Company.

2.10 Company Transaction Expenses. Prior to the Closing, the Company shall deliver to Parent a notice setting forth all legal, accounting, financial advisory, investment banking, consulting, finders and all other fees and expenses of third parties incurred or payable by or on behalf of the Company or any of its Subsidiaries in connection with the Transactions (“*Company Transaction Expenses*”). Parent and/or Purchaser shall pay all Company Transaction Expenses in full on the Closing Date on behalf of the Company to the appropriate payees.

2.11 Withholding. Each of the Surviving Corporation, Parent and Purchaser shall be entitled to deduct and withhold (or cause the Paying Agent to deduct and withhold) from the Offer Price or Merger Consideration payable to any holder of the Shares, Company Options or any other amounts otherwise payable pursuant to this Agreement such amounts as it determines in good faith are required by any Legal Requirement to be deducted and withheld. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Common Stock, In-the-money Options or other recipient of consideration hereunder in respect of which such deduction and withholding was made.

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

SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Purchaser as follows (it being understood that each representation and warranty contained in Section 3 is subject to (a) exceptions and disclosures set forth in the part or subpart of the Company Disclosure Schedule corresponding to the particular Section or subsection in this Section 3; (b) any exception or disclosure set forth in any other part or subpart of the Company Disclosure Schedule to the extent it is reasonably apparent from the wording of such exception or disclosure that such exception or disclosure is applicable to qualify such representation and warranty; and (c) disclosure in the Company SEC Documents filed on or after January 1, 2016 and prior to the date of this Agreement other than any information in the “*Risk Factors*” or “*Forward-Looking Statements*” sections of such Company SEC Documents or other forward-looking statements in such Company SEC Documents):

3.1 Due Organization; Subsidiaries Etc.

(a) The Company is an Entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all necessary power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; and (ii) to own and use its assets in the manner in which its assets are currently owned and used. The Company is qualified or licensed to do business as a foreign Entity, and is in good standing, in each jurisdiction where the nature of its business requires such qualification or licensing, except where the failure to be so qualified, licensed or in good standing does not have and would not reasonably be expected to have a Material Adverse Effect.

(b) Part 3.1(b) of the Company Disclosure Schedule identifies each Subsidiary of the Company and indicates its jurisdiction of organization. Neither the Company nor any of its Subsidiaries owns any capital stock of, or any other equity interest of, or any equity interest of any nature in, any other Entity, other than the Entities identified in Part 3.1(b) of the Company Disclosure Schedule. None of the Acquired Corporations has agreed or is obligated to make, or is bound by any Contract under which it may become obligated to make, any future equity or debt investment in or capital contribution to any other Entity.

(c) Each Subsidiary of the Company is an Entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

3.2 Certificate of Incorporation and Bylaws. The Company has delivered or made available to Parent or Parent’s Representatives accurate and complete copies of the Certificate of Incorporation, bylaws and other charter and organizational documents of each of the Acquired Corporations, including all amendments thereto, as in effect on the date hereof, which organizational documents are all in full force and effect.

3.3 Capitalization, Etc.

(a) The authorized capital stock of the Company consists of: (i) 100,000,000 shares of Company Common Stock, of which 9,334,857 shares have been issued and are outstanding as of the close of business on June 6, 2017 (the “*Determination Date*”); and (ii) 5,000,000 shares of the Company’s preferred stock, par value of \$0.001 per share, of which no shares have been issued or are outstanding. All of the outstanding shares of Company Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable.

(b) (i) None of the outstanding shares of Company Common Stock are entitled or subject to any preemptive right, right of repurchase or forfeiture, right of participation, right of maintenance or any similar right; (ii) none of the outstanding shares of Company Common Stock are subject to any right of first

refusal in favor of the Company; (iii) there are no outstanding bonds, debentures, notes or other Indebtedness of the Company having a right to vote on any matters on which the stockholders of the Company have a right to vote; and (iv) there is no Company Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or from granting any option or similar right with respect to), any shares of Company Common Stock. The Company is not under any obligation, nor is it bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Company Common Stock or other securities. The Company Common Stock constitutes the only outstanding class of securities of the Company or its Subsidiaries registered under the Securities Act.

(c) As of the close of business on the Determination Date: (i) 1,374,686 shares of Company Common Stock are subject to issuance pursuant to Company Options granted and outstanding under the 2006 Plan; (ii) 83,319 shares of Company Common Stock are subject to issuance pursuant to the Company Warrants; and (iii) 107,563 shares of Company Common Stock are reserved for future issuance under the 2006 Plan. As of the Determination Date, the weighted average exercise price of the Company Options outstanding as of that date was \$5.1802. All outstanding Company Options and other Company Equity Awards have been granted under the 2006 Plan. The Company has delivered or made available to Parent or Parent's Representatives copies of the 2006 Plan covering the Company Options outstanding as of the date of this Agreement, the forms of all stock option agreements evidencing such Company Options and the forms of all warrants evidencing the Company Warrants. Other than as set forth in this Section 3.3 (c), there is no issued, reserved for issuance, outstanding or authorized stock award, stock option, restricted stock unit award, stock appreciation, phantom stock, profit participation or similar rights or equity-based awards with respect to the Company or any of its Subsidiaries.

(d) Except as set forth in this Section 3.3, there are no: (i) outstanding shares of capital stock, or other equity interest in, any Acquired Corporation; (ii) outstanding subscriptions, options, calls, warrants or rights (whether or not currently exercisable) to acquire any shares of capital stock, restricted stock units, stock-based performance units or any other rights that are linked to, or the value of which is in any way based on or derived from the value of any shares of capital stock or other securities of any Acquired Corporation; (iii) outstanding securities, instruments, bonds, debentures, notes or obligations that are or may become convertible into or exchangeable for any shares of the capital stock or other securities of any Acquired Corporation; or (iv) stockholder rights plans (or similar plan commonly referred to as a "poison pill") or Contracts under which any Acquired Corporation is or will become obligated to sell or otherwise issue any shares of its capital stock or any other securities.

(e) All of the outstanding capital stock or other voting securities of, or ownership interests in, each Subsidiary of the Company is owned by the Company, directly or indirectly, beneficially and of record, free and clear of all Encumbrances and transfer restrictions, except for such Encumbrances and transfer restrictions of general applicability as may be provided under the Securities Act or other applicable securities laws.

3.4 SEC Filings; Financial Statements.

(a) The Company has filed or furnished on a timely basis all reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein) required to be filed or furnished by the Company with the SEC (the "*Company SEC Documents*"). As of their respective dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act or the Sarbanes-Oxley Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Company SEC Documents and, except

to the extent that information contained in such Company SEC Document has been revised, amended, modified or superseded (prior to the date of this Agreement) by a later filed Company SEC Document, none of the Company SEC Documents when filed or furnished contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements (including any related notes and schedules) contained or incorporated by reference in the Company SEC Documents: (i) complied or, if filed with or furnished to the SEC subsequent to the date of this Agreement, will comply as to form in all material respects with the published rules and regulations of the SEC applicable thereto; (ii) were prepared in accordance with United States generally accepted accounting principles (“*GAAP*”) applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to such financial statements or as permitted by Regulation S-X, or, in the case of unaudited financial statements, as permitted by Form 10-Q, Form 8-K or any successor form under the Exchange Act); and (iii) fairly present in all material respects, the consolidated financial position of the Company and its consolidated Subsidiaries as of the respective dates thereof and the consolidated results of operations and cash flows of the Company and its consolidated Subsidiaries for the periods covered thereby (subject, in the case of the unaudited financial statements, to normal and recurring year-end adjustments that are not, individually or in the aggregate, material). No financial statements of any Person other than the Company are required by GAAP to be included in the consolidated financial statements of the Company.

(c) The Company maintains, and at all times has maintained, a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) which is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, and includes those policies and procedures that: (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Acquired Corporations; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and that receipts and expenditures are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Acquired Corporations that could have a material effect on the financial statements. The Company’s management has completed an assessment of the effectiveness of the Company’s system of internal controls over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended December 31, 2016, and such assessment concluded that such controls were effective. Neither the Company nor, to the knowledge of the Company, the Company’s independent registered accountant has identified or been made aware of: (1) any significant deficiency or material weakness in the design or operation of internal control over financial reporting utilized by the Company; (2) any illegal act or fraud, whether or not material, that involves the management or other employees of the Company; or (3) any claim or allegation regarding any of the foregoing.

(d) The Company maintains and has maintained, disclosure controls and procedures required by Rule 13a-15 or 15d-15 under the Exchange Act that are designed to provide reasonable assurance that all information required to be disclosed in the Company’s reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and that all such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure and to enable each of the principal executive officer of the Company and the principal financial officer of the Company to make the certifications required under the Exchange Act with respect to such reports. The Company has evaluated

the effectiveness of the Company's disclosure controls and procedures and, to the extent required by applicable law, presented in any applicable Company SEC Document that is a report on Form 10-K or Form 10-Q or any amendment thereto its conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by such report or amendment based on such evaluation; and, to the extent required by applicable law, disclosed in such report or amendment any change in the Company's internal control over financial reporting that occurred during the period covered by such report or amendment that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company is in compliance in all material respects with all current listing and corporate governance requirements of the OTC.

(e) The Company is not a party to, nor has it any obligation or other commitment to, become a party to any securitization transaction, off-balance sheet partnership or any similar Contract (including any Contract relating to any transaction or relationship between or among the Company, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose Entity, on the other hand, or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Exchange Act)) where the result, purpose or intended effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company in the Company's published financial statements or other Company SEC Documents.

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

(g) Each document required to be filed by the Company with the SEC in connection with the Offer (the "**Company Disclosure Documents**") (including the Schedule 14D-9), and any amendments or supplements thereto, when filed, distributed or disseminated, as applicable, will comply as to form in all material respects with the applicable requirements of the Exchange Act. The Company Disclosure Documents, at the time of the filing of such Company Disclosure Documents with the SEC or any supplement or amendment thereto and at the time of any distribution or dissemination thereof to the Company's stockholders and at the time of the consummation of the Offer, will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(i) The information with respect to the Company that the Company furnishes to Parent or Purchaser in writing specifically for use in the Schedule TO and the Offer Documents, at the time of the filing of the Schedule TO, at the time of any distribution or dissemination of the Offer Documents to the Company's stockholders and at the time of the consummation of the Offer, will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(ii) Notwithstanding the foregoing, the Company makes no representation with respect to statements made or incorporated by reference therein based on information supplied by or on behalf of Parent or Purchaser for inclusion or incorporation by reference in the Company Disclosure Documents.

(h) Neither the Company nor any of its Subsidiaries has outstanding, or has arranged any outstanding, “extensions of credit” to directors or executive officers in violation of the Sarbanes-Oxley Act.

3.5 Absence of Changes. Since December 31, 2016 through the date of this Agreement, (a) except for discussions, negotiations and transactions related to this Agreement or other potential strategic transactions, the Acquired Corporations have operated in all material respects in the ordinary course of business consistent with past practice and (b) there has not occurred any event, change, action, failure to act or transaction that, individually or in the aggregate, has had or would be reasonably expected to have, a Material Adverse Effect. Since March 31, 2017 through the date of this Agreement, the Acquired Corporations have not taken any actions which, had such actions been taken after the date of this Agreement, would have required the written consent of Parent pursuant to Section 5.2(b)(i)-(iii), (vii), (viii), (xi)-(xiii), (xv)-(xxii) or (xxiii) (with respect to the foregoing clauses only).

3.6 Title to Assets. The Acquired Corporations have good and valid title to all tangible material assets owned by them as of the date of this Agreement, including all material tangible assets (other than capitalized or operating leases) reflected on the audited balance sheet in the last Annual Report on Form 10-K (the “*Balance Sheet*”) filed by the Company with the SEC (except for assets sold or otherwise disposed of in the ordinary course of business since the date of such Balance Sheet). All of said material tangible assets are owned by the Acquired Corporations free and clear of any Encumbrances (other than Permitted Encumbrances).

3.7 Real Property.

(a) None of the Acquired Corporations own, or have ever owned, any real property.

(b) Each Acquired Corporation holds a valid and existing leasehold interest in the real property that is leased or subleased by such Acquired Corporation from another Person (the “*Leased Real Property*”), free and clear of all Encumbrances other than Permitted Encumbrances. None of the Acquired Corporations has received any written notice regarding any violation or breach or default under any Company Lease that has not since been cured, except for violations or breaches that are not material to the business of the Acquired Corporations, taken as a whole.

3.8 Intellectual Property.

(a) Part 3.8(a)(i) of the Company Disclosure Schedule identifies (i) the name of the applicant/registrant and current owner, (ii) the jurisdiction of application/registration and (iii) the application or registration number for each item of Registered IP owned by or exclusively licensed to the Company or a Subsidiary. (A) The Registered IP required to be set forth on Part 3.8(a)(i) of the Company Disclosure Schedule (other than applications for Registered IP) is subsisting, and, to the knowledge of the Company, enforceable and valid, (B) other than as set forth on the Company Disclosure Schedule, none of such Registered IP has been misused, withdrawn, cancelled or abandoned, and (C) all application, registration, issuance, renewal and maintenance fees due for such Registered IP having a final due date within 60 days of the date hereof have been paid in full and are current. Each of the patents and patent applications included in the Registered IP that are owned solely by the Company or a Subsidiary, and, to the knowledge of the Company, each of the Company’s and its Subsidiaries’ co-owned or in-licensed patents and patent applications, properly identifies by name each and every inventor of the claims thereof as determined in accordance with the Legal Requirements of the jurisdiction in which such patent is issued or such patent application is pending. The Acquired Corporations are aware of no information or data that is inconsistent with any material statement made or data presented to the applicable patent office by the Acquired

Corporations, any other owner of such patent application, or patent counsel for any of the foregoing during the prosecution of a patent application that (x) is listed, or required to be listed, in Part 3.8(a)(i) of the Company Disclosure Schedule, or (y) issued as, or is in the priority chain of, a patent listed, or required to be listed, in Part 3.8(a)(i) of the Company Disclosure Schedule. Except as set forth on Part 3.8(a)(ii) of the Company Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will conflict with, alter or impair, any of the Acquired Corporations' rights in or to any Company IP or cause any supplemental payments of any kind to any Person with respect to any Company IP. The Acquired Corporations own and possess all right, title and interest in and to or have the right to use and to grant sublicenses to use, pursuant to a valid and enforceable Inbound License set forth on Part 3.8(f) of the Company Disclosure Schedule, commercially available off-the-shelf software agreement, clinical trial agreement or material transfer agreement, all material Company IP, free and clear of all Encumbrances other than Permitted Encumbrances. To the Company's knowledge, the Company IP includes all Intellectual Property Rights used in or necessary for the operation of the business of the Acquired Corporations (1) as currently conducted and (2) as currently planned by the Company to be conducted.

(b) No interference, opposition, reissue, reexamination proceeding, cancellation proceeding, injunction, written assertion, lawsuit, hearing, complaint, arbitration, mediation, written demand, International Trade Commission investigation, decree or any other written claim, or other proceeding of any nature (other than routine examination proceedings with respect to pending applications) is pending or, to the knowledge of the Company, threatened, in which the scope, validity, enforceability, priority, inventorship or ownership of any Company IP that is owned by an Acquired Corporation (or, to the knowledge of the Company, licensed to an Acquired Corporation) is being or has been contested or challenged. Each item of Registered IP listed on Part 3.8(a)(i) of the Company Disclosure Schedule that has issued or been registered is, to the knowledge of the Company, valid, issued, pending and enforceable, in full force and effect, and has not been abandoned or permitted to lapse. Part 3.8(b) of the Company Disclosure Schedule describes each filing, payment, and action that, as of the date of this Agreement, must be made or taken on or before the date that is one hundred and twenty (120) days after the date of this Agreement with respect to each item of Registered IP and for which an Acquired Corporation is responsible.

(c) No Company Associate owns or has any claim, right (whether or not currently exercisable) or interest to or in any Company IP that is owned or purported to be owned solely by an Acquired Corporation, and each Company Associate who is or was involved in the creation or development of any such Company IP pursuant to such Company Associate's activities on behalf of the Company, has signed a valid, enforceable agreement containing an assignment to an Acquired Corporation of a present grant of exclusive and sole ownership of all Intellectual Property Rights developed by such Company Associate (without further payment being owed to any such Company Associate and without any restrictions or obligations on such Acquired Corporation's ownership and use thereof), or where such an assignment is not permitted under applicable Legal Requirements, an exclusive (even as to such Company Associate) license of such Intellectual Property Rights, which license is described on Part 3.8(c) of the Company Disclosure Schedule, and confidentiality provisions protecting such Company IP, which, to the knowledge of the Company, has not been materially breached by such Company Associate. Without limiting the foregoing, all Acquired Corporations have taken commercially reasonable steps to protect, maintain and enforce all Company IP, including the secrecy, confidentiality and value of trade secrets and other confidential information.

(d) To the knowledge of the Company, no funding, facilities or personnel of any Governmental Body or any university, college, research institute or other educational institution has been or is being used, directly or indirectly, to create, in whole or in part, Intellectual Property Rights owned or purported to be owned by or, exclusively licensed to or purported to be exclusively licensed to, the Acquired

Corporations, except for any such funding or use of facilities or personnel that does not result in such Governmental Body or institution obtaining ownership or use rights to such Intellectual Property Rights, or require or obligate the Acquired Corporations to grant or offer to any Governmental Body or institution any license or right to such Intellectual Property Rights.

(e) The Acquired Corporations have taken commercially reasonable steps to maintain the confidentiality of and otherwise protect and enforce their rights in all material proprietary information held by the Acquired Corporations, or purported to be held by the Acquired Corporations, as a trade secret. To the knowledge of the Company, no Company Associate, contractor, partner or investor of the Company is in unauthorized possession of any of the trade secrets included in the Company IP.

(f) Part 3.8(f) of the Company Disclosure Schedule sets forth each license agreement pursuant to which an Acquired Corporation has obtained a license to or has been granted a covenant not to sue under, immunity from suit with respect to or other similar rights to any Intellectual Property Right (each an “*In-bound License*”) or has granted a license or covenant not to sue, immunity from suit or other similar right to any Intellectual Property Right owned by an Acquired Corporation that is material to an Acquired Corporation (each an “*Out-bound License*”) (provided, that, In-bound Licenses shall not include commercially available off-the-shelf software entered into in the ordinary course of business, and, Out-bound Licenses shall not include non-exclusive outbound licenses to service providers entered into in the ordinary course of business).

(g) (i) The operation of the business of the Acquired Corporations as currently conducted, does not (x) infringe, misappropriate, dilute or otherwise violate any Intellectual Property Rights owned by any other Person or (y) constitute any contributory infringement of or inducement to infringe, misappropriate or unlawfully use any Intellectual Property Rights owned by any other Person; and (ii) to the knowledge of the Company, no other Person is infringing, misappropriating, diluting or otherwise violating any Company IP owned by or exclusively licensed to any Acquired Corporation. As of the date of this Agreement, no Legal Proceeding is pending and served, or, to the knowledge of the Company, is being threatened or is pending and has not been served, against an Acquired Corporation or by an Acquired Corporation relating to any actual, alleged or suspected infringement, contributory infringement, inducement to infringe, misappropriation, dilution or other violation of any Intellectual Property Rights of another Person or to the Company’s or any Subsidiaries’ Registered IP or the Company’s or any Subsidiaries’ Intellectual Property Rights. No Acquired Corporation has received any written notice or other written communication (A) relating to any actual, alleged or suspected infringement, contributory infringement, inducement to infringe, misappropriation, dilution or other violation of any Intellectual Property Right of another Person by an Acquired Corporation or (B) alleging that, except pursuant to a Material Contract, the Acquired Corporation is required to pay any royalty, license fee, charge or other amount with regard to any Intellectual Property.

(h) None of the Acquired Corporations is now nor has ever been a member or promoter of, or a contributor to, any industry standards body or any similar organization that would reasonably be expected to require or obligate the Acquired Corporations to grant or offer to any other Person any license or right to any Company IP.

(i) None of the Company IP owned or purported to be owned by the Acquired Corporations is subject to any pending or outstanding injunction, directive, order, judgment, settlement, forbearance to sue, consent, ruling or other disposition of dispute that adversely restricts the use, transfer, registration or licensing of any such Intellectual Property Rights by the Acquired Corporations or otherwise

adversely affects the validity, scope, use, registrability, or enforceability of any Company IP owned or purported to be owned by the Acquired Corporations.

(j) The Company is the sole owner of all data generated in the course of, or as a result of, any clinical trial or other testing in humans. The Company has not licensed such data to any other Acquired Corporation or any other Person.

3.9 Contracts.

(a) Part 3.9(a) of the Company Disclosure Schedule identifies each Company Contract that constitutes a Material Contract as of the date of this Agreement. For purposes of this Agreement, each of the following Company Contracts, other than Employee Plans, shall be deemed to constitute a “**Material Contract**”:

(i) any Company Contract constituting a Company Employee Agreement pursuant to which the Company is or may become obligated to (A) make any severance, termination, tax gross-up or similar payment to any Company Associate or any spouse or heir of any Company Associate, (B) make any bonus, deferred compensation or similar payment (other than payments constituting base salary bonus or compensation paid in the ordinary course of business consistent with past practice) to any Company Associate or (C) grant or accelerate the vesting of, or otherwise modify, any Company Equity Award other than accelerated vesting as required by the 2006 Plan or this Agreement;

(ii) any Company Contract that is a settlement, conciliation or similar agreement with or before any Governmental Body and pursuant to which the Company will be required after the date of this Agreement to pay consideration in excess of \$50,000 or require any Acquired Corporation to conduct its business in accordance with any material obligations or limitations from and after the execution of such Company Contract;

(iii) any Company Contract (A) limiting the freedom or right of an Acquired Corporation to engage in any line of business, to make use of any material Company IP owned by any Acquired Corporation or to compete with any other Person in any location or line of business, or (B) containing any “most favored nations” terms and conditions (including with respect to pricing) granted by an Acquired Corporation or exclusivity obligations or restrictions or otherwise limiting the freedom or right of an Acquired Corporation to sell, distribute or manufacture any products or service or any technology or other assets to or for any other Person;

(iv) any Company Contract that requires by its terms or is reasonably likely to require the payment or delivery of cash or other consideration by or to an Acquired Corporation in an amount having an expected value in excess of \$50,000 in the fiscal year ending December 31, 2017 or in any fiscal year thereafter or any such Company Contract that would be expected to result in the payment or delivery of cash by or to an Acquired Corporation having an expected value in excess of \$100,000 in the aggregate during the term of such Company Contract and cannot be cancelled by the Acquired Corporation without penalty or further payment without more than ninety (90) days’ notice (other than payments for services rendered to the date of such cancellation) excluding non-exclusive outbound licenses to service providers, clinical trial agreements and material transfer agreements in each case entered into in the ordinary course of business;

(v) any Company Contract relating to Indebtedness (whether incurred, assumed, guaranteed or secured by any asset) of the Company or any Acquired Corporation;

(vi) any Company Contract or arrangement with any Person constituting a joint venture, partnership, collaboration or limited liability corporation;

(vii) any Company Contract that requires or permits the Company, or any successor, to, or acquirer of the Company, to make any payment to another person as a result of a change of control of the Company (a “*Change of Control Payment*”) or gives another Person a right to receive or elect to receive a Change of Control Payment, other than as contemplated by this Agreement;

(viii) any Company Contract that prohibits the payment of dividends or distributions in respect of the capital stock of the Company or any Acquired Corporation, prohibits the pledging of the capital stock or other equity interests of the Company or any Acquired Corporation or prohibits the issuance of any guaranty by the Company or any Acquired Corporation;

(ix) any In-bound License and any Out-bound License;

(x) any Company Contract that is a Contract with any academic institution, research center or Governmental Body (or any Person working for or on behalf of any of the foregoing);

(xi) any Company Contract with any Affiliate, director, executive officer (as such term is defined in the Exchange Act), holder of 5% or more of Company Common Stock or any of their Affiliates (other than the Company) or immediate family members (other than offer letters for employment that can be terminated at will, without severance obligations, and Company Contracts pursuant to Company Equity Awards);

(xii) any Company Contract under which the Company has agreed to indemnify any Person against any infringement, violation or misappropriation of the Intellectual Property Rights of a third Person;

(xiii) any Company Contract that provides for: (A) reimbursement of any Company Associate for, or advancement to any Company Associate of, material legal fees or other material expenses associated with any Legal Proceeding or the defense thereof; or (B) indemnification of any officer, director or employee of the Company

(xiv) any Company Contract for the lease or sublease of any real property;

(xv) any Company Contract under which an Acquired Corporation may receive or may be required to pay future milestones or royalty payments and that are not included in the In-Bound Licenses or Out-Bound Licenses;

(xvi) any Company Contract that obligates an Acquired Corporation to develop any product;

(xvii) any Company Contract granting to any Person a right of first refusal or option to purchase or acquire any material assets from any Acquired Corporation; and

(xviii) any other Company Contract that is currently in effect and has been filed (or is required to be filed) by the Company as an exhibit pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act or that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act.

(b) The Company has either delivered or made available to Parent or Parent's Representatives an accurate and complete copy of each Material Contract or has publicly made available such Material Contract in the Electronic Data Gathering, Analysis and Retrieval (EDGAR) database of the SEC. Neither the Company nor, to the knowledge of the Company, the other party is in material breach of or material default under any Material Contract and, neither the Company, or to the knowledge of the Company, the other party has taken or failed to take any action that with or without notice, lapse of time or both would constitute a material breach of or material default under any Material Contract. Each Material Contract is, with respect to the Company and, to the knowledge of the Company, the other party, a valid agreement, binding, and in full force and effect. To the knowledge of the Company, each Material Contract is enforceable by the Company in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. The Company has not received any written notice regarding any violation or breach or default under any Material Contract that has not since been cured. The Company has not waived in writing any material rights under any Material Contract. To the knowledge of the Company, as of the date hereof, (A) no party to any Material Contract has given the Company written notice of its intention to cancel, terminate or suspend performance under any Material Contract and (B) there are no unresolved disputes between any Acquired Corporation and another Person with respect to any Material Contract. No Acquired Corporation is participating in any active discussions to amend the terms of or terminate any Material Contract.

3.10 Liabilities. The Acquired Corporations do not have any liabilities of any nature (whether accrued, absolute, contingent or otherwise), except for: (a) liabilities disclosed on the Balance Sheet contained in the Company SEC Documents filed prior to the date of this Agreement; (b) liabilities or obligations incurred pursuant to the terms of, or in connection with the negotiation, execution or consummation of this Agreement; (c) liabilities for performance of obligations of the Acquired Corporations under Contracts binding upon the applicable Acquired Corporation (other than resulting from any breach or acceleration thereof) either delivered or made available to Parent or Parent's Representatives prior to the date of this Agreement or entered into in the ordinary course of business, including non-exclusive outbound licenses to service providers, clinical trial agreements and material transfer agreements; (d) liabilities incurred in the ordinary course of business since December 31, 2016; and (e) liabilities that individually or in the aggregate have not had and would not reasonably be expected to have a Material Adverse Effect.

3.11 Compliance with Legal Requirements. Each Acquired Corporation is, and has been, in compliance with all applicable Legal Requirements (including all Legal Requirements relating to the privacy of patient medical records and all other personal information and data, including with respect to the collection, storage, use, sharing, transfer, disposition, protection and processing thereof (including in connection with any clinical trials conducted by or on behalf of any Acquired Corporation)), except where the failure to be in compliance has not had and would not reasonably be expected to have a Material Adverse Effect and no Acquired Corporation has been given written notice of, or been charged with, any unresolved violation of, any Legal Requirement.

3.12 Regulatory Matters.

(a) (i) The Acquired Corporations have obtained all necessary approvals, clearances, authorizations, exemptions, licenses and registrations required by United States or foreign governments or government agencies to permit the design, development, pre-clinical and clinical testing, manufacture, labeling, sale, export, distribution and promotion of its products in jurisdictions where the Acquired Corporations currently conduct such activities (collectively, the "**Regulatory Permits**"), (ii) to their knowledge, the Acquired Corporations are in compliance in all material respects with all terms and conditions

of each Regulatory Permit and with all applicable Legal Requirements pertaining to each product, and (iii) all product manufacturing operations performed by or on behalf of the Acquired Corporations have been and are being conducted in all material respects in compliance with the Quality Systems and Good Manufacturing Practices regulations of the FDA.

(b) No Acquired Corporation has received any written notice or other written communication from the FDA or any other Governmental Body: (i) contesting the pre-market clearance or approval of, the uses of or the labeling and promotion of any of its products; or (ii) otherwise alleging any violation of any Legal Requirements with respect to the sale or manufacture of its products.

(c) There have been no recalls, field notifications or seizures ordered or adverse regulatory actions taken (or, to the knowledge of the Acquired Corporations, threatened) by the FDA or any other Governmental Body with respect to any of its products, including any facilities where any products are manufactured, packaged or stored and no Acquired Corporation has either voluntarily or at the request of any Governmental Authority, initiated or participated in a recall of any product.

(d) No product manufactured and within the control of the Acquired Corporations is (i) adulterated within the meaning of 21 U.S.C. § 351 (or similar applicable Legal Requirement), (ii) misbranded within the meaning of 21 U.S.C. § 352 (or similar applicable Legal Requirement) or (iii) a product that is in violation of 21 U.S.C. § 360 or § 360e (or similar applicable Legal Requirement).

(e) The Acquired Corporations have filed with the applicable regulatory authorities (including the FDA or any other Governmental Body performing functions similar to those performed by the FDA) all required filings, declarations, listings, registrations, reports or submissions, including but not limited to adverse event reports. All such filings, declarations, listings, registrations, reports or submissions were in material compliance with applicable Legal Requirements when filed, and no deficiencies have been asserted by any applicable Governmental Body with respect to any such filings, declarations, listing, registrations, reports or submissions.

(f) Part 3.12(f) of the Company Disclosure Schedule sets forth a complete and accurate list of each country in which the Company is currently sponsoring, or has sponsored, any preclinical or clinical investigations. All such preclinical and clinical investigations sponsored by the Acquired Corporations have been and are being conducted in material compliance with applicable Legal Requirements, rules, regulations, including Good Clinical Practices requirements and current Good Manufacturing Practices requirements, and federal and state laws, rules, regulations restricting the use and disclosure of individually identifiable health information. The Company has not received any written notices or other correspondence from the FDA or any other foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA with respect to any ongoing clinical or preclinical studies or tests requiring or recommending the termination, suspension or material modification of such studies or tests.

(g) No Acquired Corporation has (i) made an untrue statement of a material fact or fraudulent statement to the FDA or any Governmental Body, (ii) failed to disclose a material fact required to be disclosed to the FDA or (iii) committed any other act, made any statement or failed to make any statement, that (in any such case) establishes a reasonable basis for the FDA to invoke its Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities Final Policy. None of the Acquired Corporations are the subject of any pending or, to the Company's knowledge, threatened investigation by the FDA pursuant to its Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities Final Policy. None of the Acquired Corporations nor, to the knowledge of the Company, any of their respective officers, employees,

agents or clinical investigators has been suspended or debarred or convicted of any crime or engaged in any conduct that would reasonably be expected to result in (a) debarment under 21 U.S.C. Section 335a or any similar Legal Requirement or (b) exclusion under 42 U.S.C. Section 1320a-7 or any similar Legal Requirement.

(h) Each Acquired Corporation is in compliance and has been in compliance, in each case, in all material respects with all healthcare laws applicable to the operation of its business as currently conducted, including (i) any and all federal, state and local fraud and abuse laws, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the civil False Claims Act (31 U.S.C. § 3729 et seq.) and the regulations promulgated pursuant to such statutes; and (ii) the Health Insurance Portability and Accountability Act of 1996, the Health Information and Technology for Economic and Clinical Health Act, and the regulations promulgated pursuant thereto, (iii) Legal Requirements which are cause for exclusion from any federal health care program; and (iv) requirements of law relating to the billing or submission of claims, collection of accounts receivable, underwriting the cost of, or provision of management or administrative services in connection with, any and all of the foregoing, by an Acquired Corporation. No Acquired Corporation is the subject to any enforcement, regulatory or administrative proceedings against or affecting the Acquired Corporation relating to or arising under the FDCA, the Anti-Kickback Statute, or similar Legal Requirements, and no such enforcement, regulatory or administrative proceeding has been threatened.

3.13 Certain Business Practices. Neither the Company, nor any Acquired Corporation nor, to the knowledge of the Company, any of their respective current or former employees, representatives or agents (in each case, acting on behalf of, and in the capacity of an employee or representative of, any Acquired Corporation acting) has (a) used any funds (whether of the Company or otherwise) for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (b) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns or (c) violated any provision of any Anti-Corruption Laws or any rules or regulations promulgated thereunder, anti-money laundering laws or any rules or regulations promulgated thereunder or any applicable Legal Requirement of similar effect. The Company has not received any written communication that alleges any of the foregoing. The Company utilizes effective controls, procedures and an internal accounting controls system that is sufficient to provide reasonable assurances that violations of the aforementioned laws, rules or regulations will be prevented, detected and deterred.

3.14 Governmental Authorizations. Each Acquired Corporation holds all Governmental Authorizations necessary to enable such Acquired Corporation to conduct its businesses in the manner in which its business is currently being conducted, except where failure to hold such Governmental Authorizations would not have a Material Adverse Effect. The Governmental Authorizations held by the Acquired Corporations are, in all material respects, valid and in full force and effect. The Acquired Corporations are in compliance with the terms and requirements of such Governmental Authorizations, except where failure to be in compliance would not have a Material Adverse Effect.

3.15 Tax Matters.

(a) (i) Each income and other material Tax Return required to be filed by or on behalf of any Acquired Corporation on or before the date hereof have been timely filed (including any extensions of such due date), and have been prepared in compliance with all applicable Legal Requirements and are accurate and complete in all material respects, and (ii) all income and other material Taxes payable by the Acquired Corporations (whether or not shown to be due on Tax Returns of an Acquired Corporation) or required to be withheld, collected or deposited by the Acquired Corporation (including any Taxes required

to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, customer, creditor, stockholder or other third party) on or before the date hereof have been paid or withheld, collected or deposited (and, to the extent required, paid to the relevant Governmental Body).

(b) The Company's Balance Sheet has accrued all actual and estimated liabilities for all material unpaid Taxes with respect to all periods through the date thereof in accordance with GAAP. The Acquired Corporations have established, in the ordinary course of business and consistent with past practices, reserves adequate for the payment of all material unpaid Taxes of the Acquired Corporations for the period from the date of the Balance Sheet through the date hereof.

(c) There are no outstanding or pending or, to the Company's knowledge, threatened actions, suits, examinations, audits, assessments, disputes or claims of or with respect to any income or other material Tax or Tax Return of any Acquired Corporation. No deficiency for any material Tax has been asserted or assessed by a Tax authority in writing against an Acquired Corporation, which deficiency has not been paid, settled or withdrawn. No written claim has been received by an Acquired Corporation from any Governmental Body in any jurisdiction where an Acquired Corporation does not file Tax Returns that an Acquired Corporation is or may be subject to Taxes in that jurisdiction.

(a) The Company has delivered or made available to Parent or Parent's representatives accurate and complete copies of all income Tax Returns of the Acquired Corporations, and all audit reports and similar documents relating to income Tax Returns of the Acquired Corporations. No extension or waiver of the limitation period applicable to any Tax Returns or any material Taxes of an Acquired Corporation has been granted and is currently in effect. No closing agreement, private letter ruling, technical advice memorandum, advance pricing agreement, consent to an extension of time to make an election or consent to a change of method of accounting, has been requested from, entered into with or issued by a Governmental Body with respect to any Acquired Corporation.

(b) No payment or benefit made by any of the Acquired Corporations in connection with the Transactions would be non-deductible under Section 280G of the Code. None of the Acquired Corporations is party to any agreement, contract, arrangement or plan that has resulted or could result in the payment of any amount that will not be fully deductible as a result of Section 162(m) of the Code (or any comparable provision of state, local or foreign Legal Requirement). The Acquired Corporations are not a party to any Employee Plan or other Contract that would require, nor do the Acquired Corporations have any obligation (current or contingent), to compensate any individual for excise taxes paid pursuant to Section 4999 of the Code.

(c) None of the Acquired Corporations (i) has ever been a member of an affiliated group (within the meaning of Section 1504(a) of the Code) filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company), or (ii) has incurred any material liability for the Taxes of any Person (other than the Company) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or foreign Legal Requirement), as a transferee or successor, pursuant to a Contract, pursuant to applicable Legal Requirements, or otherwise (other than pursuant to customary provisions included in credit agreements, leases, and agreements entered with employees, in each case, not primarily related to Taxes and entered into in the ordinary course of business).

(d) No Acquired Corporation has been either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(e) No Acquired Corporation has entered into any “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b).

(f) Neither the Company nor any Acquired Corporation will be required to include any material item of income in, or exclude any material item of deduction from, the computation of taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting, or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date, (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Tax Legal Requirement) executed on or prior to the Closing Date, (iii) installment sale or open transaction disposition made on or prior to the Closing Date, (iv) prepaid amount received on or prior to the Closing Date, (v) deferred intercompany gain or excess loss account described in the Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign Tax Legal Requirement) or (vi) election under Section 108(i) of the Code.

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

(h) Part 3.15(k) of the Company Disclosure Schedule lists (i) each jurisdiction in which the Company and its Subsidiaries are required to file Tax Returns and/or have a place of business, taxable presence, or permanent establishment, (ii) the tax classification of each of the Company’s Subsidiaries for U.S. federal income Tax purposes, and (iii) the types of Tax Returns filed by or on behalf of the Company and its Subsidiaries in such jurisdictions.

(i) No Acquired Corporation is subject to Tax in any country other than its country of incorporation, organization or formation by virtue of having employees, a permanent establishment or other place of business in that country. The Acquired Corporations are, and have been at all relevant times, in substantial compliance with all applicable transfer pricing laws and regulations, and have maintained all material documentation required (under Section 482 of the Code and any other applicable federal, state, local or foreign Legal Requirements), if any, for all transfer pricing arrangements.

(j) No Acquired Corporation is, or ever has been, a “controlled foreign corporation” as defined in Section 957(a) of the Code, a “passive foreign investment company” as defined in Section 1297 of the Code, or a “surrogate foreign corporation” as defined in Section 7874(a)(2)(B) of the Code, and no Acquired Corporation that is organized outside of the United States is subject to U.S. federal income Tax under any provision of the Code. No Acquired Corporation that is organized outside of the United States has engaged in any transaction that would result in the inclusion of any income under Section 951 of the Code by Parent for the taxable period that includes the Closing Date. No Acquired Corporation that is organized outside of the United States is subject to any gain recognition agreement under Section 367 of the Code. No Acquired Corporation that is organized outside of the United States has ever filed an election on IRS Form 8832.

3.16 Employee Matters; Benefit Plans.

(a) Except as required by applicable Legal Requirements, the employment of each of the Acquired Corporations’ employees is terminable by the applicable Acquired Corporation at will.

(b) No Acquired Corporation is or has been a party to, or has a duty to bargain for or is currently negotiating in connection with entering into, any collective bargaining agreement, works council agreement or other Contract with a labor organization representing any of its employees and there are no

labor organizations representing, purporting to represent or, to the knowledge of the Company, seeking to represent any employees of an Acquired Corporation. There has not been any strike, slowdown, work stoppage, lockout, job action, picketing, labor dispute, question concerning labor representation, union organizing activity, or any threat thereof, or any similar activity or dispute, affecting any Acquired Corporation or any of its employees. There is not now pending, and, to the knowledge of the Company, no Person has threatened to commence, any such strike, slowdown, work stoppage, lockout, job action, picketing, labor dispute, question regarding labor representation or union organizing activity or any similar activity or dispute. There has been no material Legal Proceeding pending or, to the knowledge of the Company, threatened relating to employment, including relating to any Company Employee Agreement, wages and hours, leave of absence, plant closing notification, employment statute or regulation, privacy right, labor dispute, workers' compensation policy or long-term disability policy, safety, retaliation, whistle blower, breach of public policy, retaliation, immigration or discrimination matters involving any Company Associate, including charges of unfair labor practices or harassment complaints. The Acquired Corporations have complied in all material respects with all applicable Legal Requirements related to employment, including employment practices, wages, hours, compensation, termination of employment and/or other terms and conditions of employment (including the classification and compensation of employees for purposes of the Fair Labor Standards Act and cognate state laws) and other Legal Requirements in respect of any reduction in force, including notice, information and consultation requirements. In the past two years, there has been no "mass layoff," "employment loss," or "plant closing" as defined by the WARN Act or any other Law in respect of any Company Person nor has any Company Person been affected by any transaction or engaged in any lay-offs or employment terminations sufficient in number to trigger application of any such law.

(c) Part 3.16(c) of the Company Disclosure Schedule sets forth an accurate and complete list of each material Employee Plan (other than individual equity grant notices and award agreements and related documentation, agreements or offer letters with respect to at-will employment or agreements with consultants, in each case, entered into in the ordinary course of business and which contain terms that are the same in all material respects to the form of such notices, letters, agreements and documentation listed on Part 3.16(c) of the Company Disclosure Schedule). The Company has either delivered or made available to Parent or Parent's Representatives prior to the execution of this Agreement with respect to each material Employee Plan accurate and complete copies of: (i) all plan documents and all amendments thereto, and all related trust or other funding documents, and in the case of unwritten material Employee Plans, written descriptions thereof, (ii) all determination letters, rulings, opinion letters, information letters or advisory opinions issued by the IRS or the United States Department of Labor ("**DOL**"), (iii) the most recent annual actuarial valuation, if any, and the most recent annual report (Form Series 5500 and all schedules and financial statements attached thereto), (iv) the most recent summary plan descriptions and any material modifications thereto, (v) the most recent nondiscrimination tests required to be performed under the Code (including 401(k) and 401(m) tests) for each Employee Plan, and (vi) all material correspondence to or from the IRS, the DOL, or any other Governmental Body.

(d) No Acquired Corporation or any Person that would be or, at any relevant time, would have been considered under common control or is treated as a single employer with such Acquired Corporation under Section 414(b), (c), (m) or (o) of the Code has ever maintained, contributed to, or been required to contribute to a plan subject to Title IV of ERISA or Code Section 412, including any "single employer" defined benefit plan or any "multiemployer plan" each as defined in Section 4001 of ERISA.

(e) Each of the Employee Plans that is intended to be qualified under Section 401(a) of the Code has obtained a favorable determination letter (or opinion letter, if applicable) as to its qualified status under the Code, each such Employee Plan has timely adopted all currently effective amendments to the Code, and, to the knowledge of the Company, there are no existing circumstances or any events that have

occurred that would reasonably be expected to affect adversely the qualified status of any such Employee Plan. Each of the Employee Plans is now and has been operated in compliance in all material respects with its terms and all applicable Legal Requirements, including but not limited to ERISA and the Code. The Acquired Corporations are not, nor reasonably could be, subject to either a material liability, material fine, or material penalty under ERISA or the Code relating to the Employee Plans. The Acquired Corporations have performed in all material respects all obligations required to be performed by them under, are not in any material respect in default under or in violation of, and, to the knowledge of the Company, there is no default or violation by any other party to, any Employee Plan.

(f) Except to the extent required under Section 601 et seq. of ERISA or 4980B of the Code (or any other similar state or local Legal Requirement), neither any Acquired Corporation nor any Employee Plan has any present or future obligation to provide post-employment welfare benefits to or make any payment to, or with respect to, any current or former Company Associate pursuant to any retiree medical benefit plan or other retiree welfare plan.

(g) Neither the execution of this Agreement, the obtaining of stockholder approval, nor the consummation of the Transactions (including in combination with other events or circumstances) will (i) entitle any current or former Company Associate to severance pay, unemployment compensation, transaction bonus or any other compensatory payment, (ii) accelerate the time of payment, funding or vesting, or increase the amount, of compensation or benefits due to any current or former Company Associate, (iii) directly or indirectly cause the Acquired Corporations to transfer or set aside any material assets to fund any benefits under any Employee Plan, (iv) otherwise give rise to any material liability under any Employee Plan or (v) limit or restrict the right to amend, terminate or transfer any material assets of any Employee Plan on or following the Effective Time.

(h) Each Employee Plan or other Contract that is subject to Section 409A of the Code has been administered in compliance with the applicable Employee Plan or Contract terms and the operational and documentary requirements of Section 409A of the Code and the regulations thereunder, except for any instances of noncompliance by the Acquired Corporations that do not have or would not reasonably be expected to result in a material liability to the Acquired Corporations or any current or former Company Associate. The Acquired Corporations do not have an obligation to gross-up, indemnify or otherwise reimburse any current or former service provider to the Acquired Corporation for any tax incurred by such service provider pursuant to Section 409A of the Code.

3.17 Environmental Matters. Except for those matters that would not reasonably be expected to have a Material Adverse Effect, (a) the Acquired Corporations are, and have been, in compliance in all material respects with all applicable Environmental Laws, which compliance includes obtaining, maintaining or complying with all Governmental Authorizations required under Environmental Laws for the operation of their respective businesses, (b) as of the date hereof, there is no investigation, suit, claim, action or Legal Proceeding relating to or arising under any Environmental Law that is pending or, to the knowledge of the Company, threatened against an Acquired Corporation or Leased Real Property, (c) as of the date hereof, the Acquired Corporations have not received any written notice, report or other information of or entered into any legally-binding agreement, order, settlement, judgment, injunction or decree involving uncompleted, outstanding or unresolved violations, liabilities or requirements on the part of the respective Acquired Corporation relating to or arising under Environmental Laws, (d) to the knowledge of the Company, (1) no Person has been exposed to any Hazardous Materials at a property or facility of an Acquired Corporation and (2) there are and have been no Hazardous Materials present or Released on, at, under or from any property or facility, including the Leased Real Property, in both cases in a manner and concentration that would reasonably be expected to result in any claim against or liability of the Company under any Environmental

Law, and (e) no Acquired Corporation has assumed, undertaken, or otherwise become subject to any liability of another Person relating to Environmental Laws other than any indemnities in Material Contracts or leases for real property.

3.18 Insurance. The Company has delivered or made available to Parent or Parent's Representatives an accurate and complete copy of all material insurance policies and all material self-insurance programs and arrangements relating to the business, assets and operations of the Acquired Corporations. To the Company's knowledge, the Company maintains and has maintained insurance coverage in such amounts and covering such risks as are in accordance with normal industry practice for companies of similar size and stage of development as the Acquired Corporations. Except as would not reasonably be expected to have a Material Adverse Effect, all such insurance policies are in full force and effect, no notice of cancellation or modification has been received, and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default, by any insured thereunder. There is no material claim pending under any of the Company's insurance policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies.

3.19 Legal Proceedings; Orders.

(a) There is no Legal Proceeding pending and served (or, to the knowledge of the Company, pending and not served or threatened) against any of the Acquired Corporations or to the knowledge of the Company, against any present or former officer, director or employee of the Acquired Corporations in such individual's capacity as such, in each case that would be material to the Acquired Corporations as a whole.

(b) There is no material order, writ, injunction or judgment to which an Acquired Corporation is subject.

(c) To the Company's knowledge, no material investigation or review by any Governmental Body with respect to an Acquired Corporation is pending or is being threatened.

3.20 Authority; Binding Nature of Agreement. The Company has the corporate power and authority to enter into and deliver and to perform its obligations under this Agreement and to consummate the Transactions. The Board of Directors of the Company (at a meeting duly called and held) has (a) determined that this Agreement and the Transactions, including the Offer and the Merger, are advisable to, and in the best interest of, the Company and its stockholders, (b) approved the execution, delivery and performance by the Company of this Agreement and the consummation of the Transactions, including the Offer and the Merger, (c) agreed that the Agreement shall be subject to Section 251(h) of the DGCL, and (d) resolved to recommend that the stockholders of the Company tender their shares to Purchaser pursuant to the Offer, which resolutions, subject to Section 6.1, have not been subsequently withdrawn or modified in a manner adverse to Parent. This Agreement has been duly executed and delivered by the Company, and assuming due authorization, execution and delivery by Parent and Purchaser, this Agreement constitutes the legal, valid and binding obligations of the Company and is enforceable against the Company in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

3.21 Section 203 of the DGCL Not Applicable. As of the date hereof and at all times on or prior to the Effective Time, the Board of Directors of the Company has and will take all actions so that the restrictions applicable to business combinations contained in Section 203 of the DGCL and any other Takeover Law are, and will be, to the extent such restrictions can be rendered inapplicable by action of the Board of

Directors of the Company under Legal Requirements, inapplicable to the execution, delivery and performance of this Agreement and to the consummation of the Offer, the Merger and the other Transactions.

3.22 Merger Approval. Following the Offer Acceptance Time, assuming satisfaction of the Minimum Condition, no vote of the holders of any class or series of the Company's capital stock will be required in order to adopt this Agreement and consummate the Merger.

3.23 Non-Contravention; Consents. Assuming compliance with the applicable provisions of the DGCL, any applicable filing, notification or approval in any jurisdiction required by Antitrust Laws and the rules and regulations of the OTC, the execution and delivery of this Agreement by the Company and the consummation by the Company of the Transactions will not: (a) cause a violation of any of the provisions of the Certificate of Incorporation or bylaws (or similar organizational documents) of the Company or any Subsidiary of the Company; or (b) cause a violation by any Acquired Corporation of any Legal Requirement or order applicable to such Acquired Corporation, or to which such Acquired Corporation or any of its assets are subject; or (c) conflict with, result in breach of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or cause or permit the termination, cancellation, acceleration or other change of any material right or obligation or the loss of any material benefit to which any Acquired Corporation is entitled under, or result in the creation of any Lien (other than Permitted Liens) upon any of the properties or assets owned or operated by the Company or any Company Subsidiaries pursuant to the terms, conditions or provisions of, any Material Contract, except with respect to the foregoing items (b) and (c) as would not, individually or in the aggregate, be material to the Acquired Corporations taken as a whole. Except as may be required by the Exchange Act (including the requirement under the Exchange Act for the Company's stockholders to approve or disapprove, on an advisory basis, the Merger-related compensation of the Company's named executive officers and the filing with the SEC of the Schedule 14D-9, and such reports under the Exchange Act as may be required in connection with this Agreement and the Transactions), the DGCL, and any filing, notification or approval in any jurisdiction required by Antitrust Laws and the rules and regulations of the OTC, the Company is not required to give notice to, make any filing with, or obtain any Consent from any Person at any time prior to the Closing in connection with the execution and delivery of this Agreement, or the consummation by the Company of the Transactions, except those filings, notifications, approvals, notices or Consents that the failure to make, obtain or receive, as applicable, are not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

3.24 Fairness Opinion. The Company's Board of Directors has received the written opinion of Canaccord Genuity as financial advisor to the Company, dated as of the date of this Agreement, to the effect that, as of the date of such opinion, and based on and subject to the assumptions made, procedures followed, matters considered and qualifications and limitations described therein, the Merger Consideration, consisting of the Cash Portion plus the CVR Portion, to be paid to the holders of Shares (other than Shares held by the Company (or held in the Company's treasury), any wholly-owned Subsidiary of the Company, Parent, Purchaser or any other wholly owned Subsidiary of Parent, and any Dissenting Shares) in the Offer and the Merger, taken together, is fair, from a financial point of view, to such holders. The Company will make available to Parent solely for informational purposes a signed copy of such fairness opinion as soon as possible following the date of this Agreement.

3.25 Financial Advisor. Except for Canaccord Genuity, no broker, finder, investment banker, financial advisor or other Person is entitled to any brokerage, finder's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of the Company. The Company has made available to Parent on or prior to the date of this Agreement a true and complete copy of all agreements with Canaccord Genuity pursuant to which such firm would be entitled to any payment relating to the Offer, the Merger or the other Transactions.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PARENT AND PURCHASER

Parent and Purchaser represent and warrant to the Company as follows:

4.1 Due Organization. Each of Parent and Purchaser is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all necessary power and authority: (a) to conduct its business in the manner in which its business is currently being conducted; (b) to own and use its assets in the manner in which its assets are currently owned and used; and (c) to perform its obligations under all Contracts by which it is bound, except where any such failure would not reasonably be expected to have a Parent Material Adverse Effect. Parent has either delivered or made available to Company or Company's Representatives accurate and complete copies of the certificate of incorporation, bylaws and other charter and organizational documents of Parent and Purchaser, including all amendments thereto.

4.2 Purchaser. Purchaser was formed solely for the purpose of engaging in the Transactions and activities incidental thereto and has not engaged in any business activities or conducted any operations other than in connection with the Transactions and those incident to its formation. Either Parent or a wholly owned subsidiary of Parent owns beneficially and of record all of the outstanding capital stock of Purchaser.

4.3 Authority; Binding Nature of Agreement. Parent and Purchaser have the corporate power and authority to execute and deliver and perform their obligations under this Agreement and the CVR Agreement; and, subject to receipt of the Parent Consent, the execution, delivery and performance by Parent and Purchaser of this Agreement and the CVR Agreement have been duly authorized by all necessary action on the part of Parent and Purchaser and their respective boards of directors. This Agreement and the CVR Agreement constitute the legal, valid and binding obligations of Parent and Purchaser, and assuming due authorization, execution and delivery by the Company, is enforceable against them in accordance with its terms, subject to (a) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

4.4 Non-Contravention; Consents. Assuming the delivery of the Parent Consent, and any applicable filing, notification or approval in any jurisdiction required by Antitrust Laws, the execution and delivery of this Agreement and the CVR Agreement by Parent and Purchaser, and the consummation of the Transactions, will not: (a) cause a violation of any of the provisions of the certificate of incorporation or bylaws (or other applicable organizational documents) of Parent or Purchaser; (b) cause a violation by Parent or Purchaser of any Legal Requirement or order applicable to Parent or Purchaser, or to which they are subject; or (c) conflict with, result in a breach of, or constitute a default on the part of Parent or Purchaser under any provision of any Contract, except, in the case of clauses "(b)" and "(c)", for such conflicts, violations, breaches or defaults as would not reasonably be expected to have a Parent Material Adverse Effect. Except as may be required by the Exchange Act (including the filing with the SEC of the Offer Documents), state takeover laws, the DGCL and any filing, notification or approval in any jurisdiction required by Antitrust Laws, neither Parent nor Purchaser, nor any of Parent's other Affiliates, is required to make any filing with or give any notice to, or to obtain any Consent from, any Person at or prior to the Closing in connection with the execution and delivery of this Agreement and the CVR Agreement by Parent or Purchaser or the consummation by Parent or Purchaser of the Offer, the Merger or the other Transactions, other than such filings, notifications, approvals, notices or Consents that, if not obtained, made or given, would not reasonably be expected to have a Parent Material Adverse Effect. No vote of Parent's stockholders is necessary to approve this Agreement or the CVR Agreement or any of the Transactions.

4.5 Disclosure. None of the Offer Documents will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information with respect to Parent or Purchaser supplied or to be supplied by or on behalf of Parent or Purchaser or any of their Subsidiaries specifically for inclusion or incorporation by reference in the Schedule 14D-9 will, at the time such document is filed with the SEC, at any time such document is amended or supplemented or at the time such document is first published, sent or given to the Company's stockholders, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

4.6 Absence of Litigation. There is no Legal Proceeding pending and served or, to the knowledge of Parent, pending and not served or overtly threatened against Parent or Purchaser, except as would not and would not reasonably be expected to materially and adversely affect Parent's or Purchaser's ability to consummate the Transactions. To the knowledge of Parent or Purchaser, as of the date of this Agreement, neither Parent nor Purchaser is subject to any continuing order of, consent decree, settlement agreement or similar written agreement with, or continuing investigation by, any Governmental Body, or any order, writ, judgment, injunction, decree, determination or award of any Governmental Body, except as would not and would not reasonably be expected to materially and adversely affect Parent's or Purchaser's ability to consummate the Transactions.

4.7 Funds. Parent has available cash resources in an amount sufficient to pay the aggregate Offer Price payable under the terms of this Agreement and the CVR Agreement.

4.8 Ownership of Company Common Stock. As of the date hereof, neither Parent nor Purchaser is an "interested stockholder" of the Company under Section 203(c) of the DGCL.

4.9 Acknowledgement by Parent and Purchaser. Neither Parent nor Purchaser is relying and neither Parent nor Purchaser has relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in Section 3, including the Company Disclosure Schedule. Such representations and warranties by the Company constitute the sole and exclusive representations and warranties of the Company in connection with the Transactions and each of Parent and Purchaser understands, acknowledges and agrees that all other representations and warranties of any kind or nature whether express, implied or statutory are specifically disclaimed by the Company.

4.10 Brokers and Other Advisors. Except for Stifel, Nicolaus & Company, Incorporated, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Parent or any of its Subsidiaries except for Persons, if any, whose fees and expenses will be paid by Parent.

SECTION 5. CERTAIN COVENANTS OF THE COMPANY

5.1 Access and Investigation. During the period from the date of this Agreement until the earlier of the Offer Acceptance Time and the termination of this Agreement pursuant to Section 8.1 (the "**Pre-Closing Period**"), upon reasonable advance notice to the Company, the Company shall, and shall cause the respective Representatives of the Company to: (a) provide Parent and Parent's Representatives with reasonable access during normal business hours of the Company to the Company's Representatives, personnel, and assets and to all existing books, records, Tax Returns, files related to Intellectual Property

Rights, work papers and other documents and information relating to the Company; and (b) promptly provide Parent and Parent's Representatives with all reasonably requested information regarding the business of the Company, including copies of the existing books, records, Tax Returns, files related to Intellectual Property Rights, work papers and other documents and information relating to the Company, and with such additional financial, operating, personnel and other data and information regarding the Company, as Parent may reasonably request; *provided, however*, that any such access shall be conducted at Parent's expense, at a reasonable time, under the supervision of appropriate personnel of the Company and in such a manner as not to unreasonably interfere with the normal operation of the business of the Company. Nothing herein shall require the Company to disclose any information to Parent if such disclosure would, in its reasonable discretion (and after notice to Parent) (i) jeopardize any attorney-client or other legal privilege (so long as the Company has reasonably cooperated with Parent to permit such inspection of or to disclose such information on a basis that does not waive such privilege with respect thereto), (ii) contravene any applicable Legal Requirement or binding agreement entered into prior to the date of this Agreement (including any confidentiality agreement to which the Company or its Affiliates is a party); *provided, further*, that (A) the Company shall use commercially reasonable efforts during the Pre-Closing Period to provide Parent with redacted versions of any documents withheld in accordance with the foregoing sub-clause "(ii)" and (B) information shall be disclosed subject to execution of a joint defense agreement in customary form, to external counsel for Parent to the extent reasonably required for the purpose of complying with applicable Antitrust Laws. With respect to the information disclosed pursuant to this Section 5.1, Parent shall comply with, and shall instruct Parent's Representatives to comply with, all of its obligations under the Confidentiality Agreement, dated February 10, 2017, between the Company and Parent (the "**Confidentiality Agreement**").

5.2 Operation of the Company's Business.

(a) During the Pre-Closing Period: (i) except (x) as expressly required under the terms of this Agreement or as required by applicable Legal Requirements, (y) with the written consent of Parent (not to be unreasonably withheld, conditioned or delayed), or (z) as set forth in Part 5.2 of the Company Disclosure Schedule, the Company shall use its commercially reasonable efforts to ensure that each Acquired Corporation conducts in all material respects its business and operations in the ordinary course of business consistent with past practice; and (ii) the Company shall promptly notify Parent of (A) any knowledge of any notice from any Person alleging that the Consent of such Person is or may be required in connection with any of the Transactions, and (B) any Legal Proceeding commenced, or, to its knowledge threatened, relating to or involving any Acquired Corporation that relates to the consummation of the Transactions. The Company shall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to preserve intact the material components of its current business organization, including keeping available the services of current officers and key employees and maintaining their respective relations and good will with all material suppliers, Governmental Bodies and other material business relations.

(b) During the Pre-Closing Period, except (x) as expressly required or permitted under the terms of this Agreement or as required by applicable Legal Requirements, (y) with the written consent of Parent (not to be unreasonably withheld, conditioned or delayed), or (z) as set forth in Part 5.2 of the Company Disclosure Schedule, the Acquired Corporations shall not:

(i) (1) establish a record date for, declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of its capital stock (including the Company Common Stock), or (2) repurchase, redeem or otherwise reacquire any of its shares of capital stock (including any Company Common Stock), or any rights, warrants or options to acquire any shares of its capital stock, other than: (A) repurchases of shares of Company Common Stock outstanding as of the date hereof pursuant to the Company's right (under written commitments in effect as of the date hereof) to purchase shares of

Company Common Stock held by a Company Associate only upon termination of such associate's employment or engagement by the Company; (B) repurchases or reacquisitions of Company Equity Awards or Company Warrants (or shares of capital stock issued upon the exercise or vesting thereof) outstanding on the date hereof (in cancellation thereof) pursuant to the terms of any such Company Equity Awards or Company Warrant (in effect as of the date hereof) between the Company and a Company Associate or member of the Board of Directors of the Company only upon termination of such Person's employment or engagement by the Company or upon any other termination or cancellation of the Company Equity Award, pursuant to the terms of such Company Equity Awards; or (C) in connection with withholding to satisfy the Tax obligations with respect to Company Equity Awards or Company Warrants;

(ii) split, combine, subdivide or reclassify any shares of its capital stock (including the Company Common Stock) or other equity interests;

(iii) sell, issue, grant, deliver, pledge, transfer, encumber or authorize the issuance, sale, delivery, pledge, transfer, encumbrance or grant of (A) any capital stock, equity interest or other security, (B) any option, call, warrant, restricted securities or right to acquire any capital stock, equity interest or other security, or (C) any instrument convertible into or exchangeable for any capital stock, equity interest or other security (except that the Company may issue shares of the Company Common Stock as required to be issued upon the exercise or vesting of Company Equity Awards or Company Warrants outstanding as of the date of this Agreement);

(iv) except as contemplated by Section 6.3, (A) establish, adopt, terminate or amend any Employee Plan (or any plan, program, arrangement, practice or agreement that would be an Employee Plan if it were in existence on the date hereof except that the Company may amend any Employee Plans to the extent required by applicable Legal Requirements), (B) amend or waive any of its rights under, or accelerate the vesting under, any provision of any of the Employee Plans (or any plan, program, arrangement, practice or agreement that would be an Employee Plan if it were in existence on the date hereof, except as required by this Agreement), (C) grant any Company Associate any increase in compensation, bonuses or other benefits other than in the ordinary course of business consistent with past practice or (D) pay any severance, retention or retirement benefits to any current or former Company Associates, other than vested benefits (including benefits that become vested as a result of the Transactions) required by the terms of an Employee Plan listed on Part 3.16(c) of the Company Disclosure Schedule or (E) grant any equity or equity-based compensation to any Company Associates;

(v) make any Company contributions (excluding contributions which are employee deferrals of eligible earnings under the Company's 401(k) plan) to the Company's 401(k) plan other than as required under the terms of such plan as in effect on the date of this Agreement, or make any contribution to the Company's 401(k) plan in Shares;

(vi) hire, promote or terminate any Company Associate other than in the ordinary course of business consistent with past practice;

(vii) amend or permit the adoption of any amendment to its Certificate of Incorporation or bylaws or other charter or organizational documents;

(viii) form any Subsidiary, acquire (by merger, consolidation or acquisition of stock or otherwise) any businesses of any other Person or any equity interest in any other Entity or enter into any joint venture, partnership, limited liability corporation or similar arrangement;

(ix) make or authorize any capital expenditure (except that the Company may make any capital expenditure that does not exceed \$50,000 individually and \$100,000 in the aggregate during any fiscal quarter);

(x) acquire, lease, license, sublicense, pledge, sell or otherwise dispose of, divest or spin-off, abandon, waive, relinquish or permit to lapse (other than any patent expiring at the end of its statutory term), transfer, assign, guarantee, exchange or swap, mortgage or otherwise encumber (including pursuant to a sale-leaseback transaction or securitization) or subject to any material Encumbrance (other than Permitted Encumbrances) any material right or other material asset or property of any of the Acquired Corporations, including without limitation any Company IP owned by any Acquired Corporation, (except, in the case of any of the foregoing (A) non-exclusive outbound licenses to service providers, clinical trial agreements and material transfer agreements, in each case, in the ordinary course of business consistent with past practice), (B) pursuant to dispositions of in each case obsolete, surplus or worn out assets that are no longer useful in the conduct of the business of the Company and (C) when added to all other capital expenditures made on behalf of the Company since the date of this Agreement, does not exceed \$50,000 individually and \$100,000 in the aggregate during any fiscal quarter;

(xi) lend money or make capital contributions or advances to or make investments in, any Person, or incur or guarantee any Indebtedness (except for advances to employees and consultants for travel and other business related expenses in the ordinary course of business consistent with past business practice and in compliance with the Company's policies related thereto);

(xii) excluding any renewal of a Material Contract on terms no less favorable in all material respects in the aggregate to the Acquired Corporations, or with respect to a revenue generating contract with a customer in the ordinary course of business, amend or modify in any material respect, waive any rights under, terminate, replace or release, settle or compromise any material claim, liability or obligation under any Material Contract or enter into any Contract which if entered into prior to the date hereof would have been a Material Contract;

(xiii) other than in the ordinary course of business, (a) make any change to any accounting method or accounting period used for Tax purposes (or request such a change); (b) make or change any material Tax election; (c) file any income or other material Tax Return other than on a basis consistent with past practice; (d) file an amended Tax Return; (e) enter into a closing agreement with any Governmental Body regarding any Tax; (f) settle, compromise or consent to any material Tax claim or assessment or surrender a right to a material Tax refund; or (g) waive or extend the statute of limitations with respect to any income or material Tax other than pursuant to extensions of time to file a Tax Return obtained in the ordinary course of business;

(xiv) commence any Legal Proceeding, except (A) in connection with a breach of this Agreement or any other agreements contemplated hereby, (B) in the ordinary course of business for the routine collection of bills and involving only the payment by or to the Acquired Corporations of money damages and (C) in such cases where it, in good faith, determines that failure to commence an Action would result in the material impairment of a valuable aspect of its business (provided that it consults with Parent prior to the filing of any such lawsuit);

(xv) settle, release, waive or compromise any Legal Proceeding or other claim (or threatened Legal Proceeding or other claim), other than any Legal Proceeding relating to a breach of this Agreement or any other agreements contemplated hereby or pursuant to a settlement that does not relate to any of the Transactions;

(xvi) correspond, communicate or consult with (in each case, at any planned meetings or telephonic discussions involving substantive matters, or through written correspondence) the FDA or similar Governmental Body or any Governmental Body having jurisdiction over any of the Company's pending clinical trials, except in the ordinary course of business, without, to the extent reasonable practicable, providing Parent with prior written reasonable advance notice and the opportunity to consult with the Company with respect to such correspondence, communication or consultation;

(xvii) publicly disclose any clinical data relating to or resulting from the Company's pending clinical trials or any analysis or work product created by or on behalf of the Company based in whole or in part on such clinical data;

(xviii) enter into any collective bargaining agreement or other agreement with any labor organization;

(xix) adopt or implement any stockholder rights plan or similar arrangement;

(xx) enter into any new line of business;

(xxi) adopt a plan or agreement of complete or partial liquidation or dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Acquired Corporations; or

(xxii) authorize any of, or agree or commit to take, any of the actions described in clauses "(i)" through "(xxii)" of this Section 5.2(b).

Notwithstanding the foregoing, nothing contained herein shall give to Parent or Purchaser, directly or indirectly, rights to control or direct the operations of the Company prior to the Offer Acceptance Time and nothing contained in this Agreement is intended to give the Company, directly or indirectly, the right to control or direct Parent's or its Subsidiaries' operations. Prior to the Effective Time, each of Parent and the Company shall exercise, consistent with the terms and conditions hereof, complete control and supervision of its and its Subsidiaries' respective operations.

5.3 No Solicitation.

(a) For the purposes of this Agreement, "***Acceptable Confidentiality Agreement***" means any customary confidentiality agreement that contains provisions that are no less favorable to the Company in the aggregate than those contained in the Confidentiality Agreement, provided that any such agreement shall not be required to contain any "stand-still" or similar provisions.

(b) Except as permitted by this Section 5.3, during the Pre-Closing Period the Acquired Corporations shall not, and shall not authorize or permit any of their Representatives to (i) continue any solicitation, knowing encouragement, discussions, activities or negotiations with any Persons that may be ongoing with respect to an Acquisition Proposal and (ii) directly or indirectly, (A) solicit, initiate or knowingly facilitate or encourage (including by way of furnishing non-public information or granting a waiver under Section 203 of the DGCL) any inquiries regarding, or the making of any proposal or offer that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal, (B) engage in, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any other Person any non-public information in connection with or for the purpose of soliciting, encouraging or facilitating, an Acquisition Proposal or any proposal or offer that could reasonably be expected to lead to an Acquisition Proposal, (C) enter into any letter of intent, acquisition agreement, agreement in principle or similar agreement providing

for an Acquisition Proposal or any proposal or offer that could reasonably be expected to lead to an Acquisition Proposal or (D) resolve, publicly propose or agree to do any of the foregoing. The Company shall, and shall cause the other Acquired Corporations and its and their Representatives to, promptly request the return from, or destruction by, all third parties of all non-public information previously furnished or made available to such parties by or on behalf of the Acquired Corporations and immediately terminate all physical and electronic data room access previously granted to any such party or its Representatives. Notwithstanding anything to the contrary contained in this Agreement, the Acquired Corporations and their Representatives may in any event (A) seek to clarify and understand the terms and conditions of any inquiry or proposal made by any Person solely to determine whether such inquiry or proposal constitutes or could reasonably be expected to lead to an Acquisition Proposal and (B) inform a Person that has made or, to the knowledge of the Company, is considering making an Acquisition Proposal of the provisions of this Section 5.3.

(c) If at any time on or after the date of this Agreement and prior to the Offer Acceptance Time any Acquired Corporation or any of its Representatives receives an unsolicited *bona fide* written Acquisition Proposal from any Person or group of Persons, which Acquisition Proposal was made or renewed on or after the date of this Agreement and did not result from any breach of this Section 5.3, if the Company's Board of Directors determines in good faith, after consultation with its financial advisors and outside legal counsel, that such Acquisition Proposal constitutes or would reasonably be expected to lead to a Superior Offer, then the Company and its Representatives may (x) furnish, pursuant to (but only pursuant to) an Acceptable Confidentiality Agreement, information (including non-public information) with respect to the Acquired Corporations to the Person or group of Persons who has made such Acquisition Proposal; *provided that* the Company shall concurrently provide to Parent any non-public information concerning the Company or any of its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent or its Representatives and (y) engage in or otherwise participate in discussions or negotiations with the Person or group of Persons making such Acquisition Proposal if (and only if) and only to the extent that before taking any of the actions described in the foregoing clauses (x) and (y) the Company's Board of Directors determines in good faith, after consulting with its outside legal counsel, that failure to take such an action would likely constitute a breach of the fiduciary duties of the Board of Directors of the Company to the Company's stockholders under applicable Legal Requirements.

(d) Following the date of this Agreement, the Company shall (i) promptly (and in any event within 24 hours) notify Parent orally and in writing if any inquiries, proposals, offers or requests with respect to an Acquisition Proposal (including any request for non-public information related to the Acquired Corporations) are received by any Acquired Corporation or any of its Representatives, (ii) provide to Parent the identity of the Person making such inquiry, proposal, offer or request, and a copy of any written materials related thereto (of, if oral, a summary of the material terms and conditions of any such inquiry, proposal, offer or request), (iii) keep Parent reasonably informed of any material developments, discussions or negotiations regarding any such inquiry, proposal, offer, request or Acquisition Proposal on a prompt (and in any event within 24 hours) basis, including by providing prompt (and in any event within 24 hours) notice of all material amendments or modifications thereto and all written materials subsequently provided in connection therewith, and (iv) upon the request of Parent, promptly (and in any event within 24 hours) inform Parent of the status of such Acquisition Proposal. The Company agrees that it and its Subsidiaries will not enter into any confidentiality agreement with any Person subsequent to the date hereof which prohibits the Company from providing any information to Parent in accordance with this Section 5.3 or otherwise prohibits the Company from complying with its obligations under this Section 5.3. The Company further agrees that it will not provide information to any Person pursuant to any confidentiality agreement entered into prior to the date of this Agreement unless such Person agrees prior to receipt of such information to waive any provision that would prohibit the Company from providing any information to Parent in accordance with

this Section 5.3 or otherwise prohibit the Company from complying with its obligations under this Section 5.3.

(e) Nothing in this Section 5.3 or elsewhere in this Agreement shall prohibit the Company from (i) taking and disclosing to the stockholders of the Company a position contemplated by Rule 14e-2(a), Rule 14d-9 or Item 1012(a) of Regulation M-A promulgated under the Exchange Act, (ii) making any disclosure to the stockholders of the Company that the Company determines is required by applicable Legal Requirements after consultation with outside counsel or (iii) making any “stop, look and listen” communication pursuant to Rule 14d-9(f) promulgated under the Exchange Act; provided that any such disclosure or position described in clause (i) or (ii) shall be deemed to be a Company Adverse Change Recommendation subject to the terms and conditions of this Agreement, unless the Company’s Board of Directors reaffirms the Company Board Recommendation in such disclosure or in connection with such action.

(f) The Company agrees that in the event that any Acquired Corporation or any Representative of any Acquired Corporation takes any action which, if taken by the Company, would constitute a breach of this Section 5.3, the Company shall be deemed to be in breach of this Section 5.3.

5.4 FIRPTA Documentation. Not more than 30 days prior to, or concurrently with, the Offer Acceptance Time, the Company shall prepare and deliver to Parent (a) a statement in form and substance required under Treasury Regulations Sections 1.1445-2(c)(3)(i) and 1.897-2(h)(1), dated as of the date of the Offer Acceptance Time, together with written authorization for Parent to deliver such statement to the IRS on behalf of the Company after the Closing, and (b) a notice in form and substance required under Treasury Regulations Section 1.897-2(h)(2).

SECTION 6. ADDITIONAL COVENANTS OF THE PARTIES

6.1 Company Board Recommendation.

(a) The Company hereby consents to the Offer and represents that its Board of Directors, at a meeting duly called and held, has made the Company Board Recommendation. Subject to Section 6.1 (b), the Company hereby consents to the inclusion of a description of the Company Board Recommendation in the Offer Documents. During the Pre-Closing Period, subject to Section 6.1(b), neither the Board of Directors of the Company nor any committee thereof shall (i)(A) withdraw (or modify in a manner adverse to Parent or Purchaser), or publicly propose to withdraw (or modify in a manner adverse to Parent or Purchaser), the Company Board Recommendation, (B) approve, recommend or declare advisable, or publicly propose to approve, recommend or declare advisable, any Acquisition Proposal, or (C) fail to include the Company Board Recommendation in the Schedule 14D-9 (any action described in this clause (i) being referred to as a “*Company Adverse Change Recommendation*”) or (ii) approve, recommend or declare advisable, or propose to approve, recommend or declare advisable, or allow the Company to execute or enter into any Contract with respect to any Acquisition Proposal, or requiring, or reasonably expected to cause, the Company to abandon, terminate, delay or fail to consummate, or that would otherwise materially impede, interfere with or be inconsistent with, the Transactions (other than an Acceptable Confidentiality Agreement).

(b) Notwithstanding anything to the contrary contained in this Agreement, at any time prior to Purchaser accepting, for the first time, for payment such number of Shares validly tendered and not properly withdrawn pursuant to the Offer as satisfies the Minimum Condition (the “*Offer Acceptance Time*”):

(i) if the Company has received a *bona fide* written Acquisition Proposal (which Acquisition Proposal did not arise out of a breach of Section 5.3) from any Person that has not been

withdrawn and after consultation with outside legal counsel and financial advisors, the Company's Board of Directors shall have determined, in good faith, that such Acquisition Proposal is a Superior Offer, (x) the Company's Board of Directors may make a Company Adverse Change Recommendation and/or (y) the Company may terminate this Agreement to enter into a Specified Agreement with respect to such Superior Offer, in each case if and only if: (A) the Company's Board of Directors determines in good faith, after consultation with the Company's outside legal counsel, that the failure to do so would likely constitute a breach of the fiduciary duties of the Board of Directors of the Company to the Company's stockholders under applicable Legal Requirements; (B) the Company shall have given Parent prior written notice of its intention to consider making a Company Adverse Change Recommendation or terminate this Agreement pursuant to Section 8.1(e) at least five (5) business days prior to making any such Company Adverse Change Recommendation or termination (a "**Determination Notice**") (which notice shall not constitute a Company Adverse Change Recommendation); and (C) (1) the Company shall have provided to Parent a summary of the material terms and conditions of the Acquisition Proposal and copies of all written materials related thereto in accordance with Section 5.3(d), (2) the Company shall have given Parent the five (5) business days after the Determination Notice to propose revisions to the terms of this Agreement or make another proposal so that such Acquisition Proposal would cease to constitute a Superior Offer, and shall have negotiated in good faith with Parent with respect to such proposed revisions or other proposal, if any, (3) after considering the results of such negotiations and giving effect to the proposals made by Parent, if any, after consultation with outside legal counsel and financial advisors, the Company's Board of Directors shall have determined, in good faith, that such Acquisition Proposal is a Superior Offer and that the failure to make the Company Adverse Change Recommendation or terminate this Agreement pursuant to Section 8.1(e) would likely constitute a breach of the fiduciary duties of the Board of Directors of the Company to the Company's stockholders under applicable Legal Requirements, and (4) if the Company intends to terminate this Agreement to enter into a Specified Agreement, the Company shall have complied with Section 8.1(e). Issuance of any "stop, look and listen" communication by or on behalf of the Company pursuant to Rule 14d-9(f) shall not be considered a Company Adverse Change Recommendation and shall not require the giving of a Determination Notice or compliance with the procedures set forth in this Section 6.1. For the avoidance of doubt, the provisions of this Section 6.2(b)(i) shall also apply to any material amendment to any Acquisition Proposal and require a new Determination Notice, except that the references to five (5) business days shall be deemed to be three (3) business days; and

(ii) other than in connection with an Acquisition Proposal, the Company's Board of Directors may make a Company Adverse Change Recommendation in response to a Change in Circumstance, if and only if: (A) the Company's Board of Directors determines in good faith, after consultation with the Company's outside legal counsel, that the failure to do so would likely constitute a breach of the fiduciary duties of the Board of Directors of the Company to the Company's stockholders under applicable Legal Requirements; (B) the Company shall have given Parent a Determination Notice at least five (5) business days prior to making any such Company Adverse Change Recommendation; and (C) (1) the Company shall have specified the Change in Circumstance in reasonable detail, (2) the Company shall have given Parent the five (5) business days after the Determination Notice to propose revisions to the terms of this Agreement or make another proposal so that such Change in Circumstance would no longer necessitate a Company Adverse Change Recommendation, and shall have negotiated in good faith with Parent with respect to such proposed revisions or other proposal, if any, and (3) after considering the results of such negotiations and giving effect to the proposals made by Parent, if any, after consultation with outside legal counsel, the Company's Board of Directors shall have determined, in good faith, that the failure to make the Company Adverse Change Recommendation in response to such Change in Circumstance would likely constitute a breach of the fiduciary duties of the Board of Directors of the Company to the Company's stockholders under applicable Legal Requirements. For the avoidance of doubt, the provisions of this Section 6.1(b)(ii) shall also apply to any material change to the facts and circumstances relating to such Change in

Circumstance and require a new Determination Notice, except that the references to five (5) business days shall be deemed to be three (3) business days.

6.2 Filings, Consents and Approvals.

(a) Subject to the terms and conditions set forth in this Agreement, each of the Parties shall use their respective reasonable best efforts to take, or cause to be taken, all actions, to file, or cause to be filed, all documents and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper or advisable under applicable Antitrust Laws to consummate and make effective the Transactions as soon as reasonably practicable, including (i) the obtaining of all necessary actions or nonactions, waivers, consents, clearances, decisions, declarations, approvals, and expirations or terminations of waiting periods, from Governmental Bodies and the making of all necessary registrations and filings and the taking of all steps as may be necessary to obtain any such consent, decision, declaration, approval, clearance or waiver, or expiration or termination of a waiting period by or from, or to avoid an action or proceeding by, any Governmental Body in connection with any Antitrust Law; (ii) the obtaining of all necessary consents, authorizations, approvals or waivers from third parties; and (iii) the execution and delivery of any additional instruments necessary to consummate the Transactions. Notwithstanding anything in this Agreement to the contrary, in no event will Parent (nor any of its Subsidiaries or Affiliates) be required to, and, without the prior written consent of Parent (which consent may be withheld in its sole discretion), the Company shall not and shall not permit any of its Subsidiaries or Affiliates to, propose or agree to accept any undertaking or condition, to enter into any consent decree, to make any divestiture or license, to accept any operational restriction, or take any other action that, in the sole judgment of Purchaser and Parent, could be expected to limit the right of Purchaser or Parent to own or operate all or any portion of its or the Company's businesses, products or assets.

(b) Without limiting the generality of anything contained in this Section 6.2, each Party hereto shall give the other Parties prompt notice of any pending or threatened request, inquiry, investigation, action or Legal Proceeding brought by a Governmental Body, or brought by a third party before any Governmental Body, in each case with respect to the Transactions (an "*Investigation*"). In connection with any such Investigation, and subject to applicable Laws relating to the exchange of information and appropriate agreements to limit disclosure to outside counsel and consultants retained by such counsel and preserve the attorney-client or other legal privileges, each Party hereto shall use its commercially reasonable efforts to (i) keep the other Parties informed as to the status of any such request, inquiry, investigation, action or Legal Proceeding, (ii) promptly inform the other Parties of any communication to or from the FTC, DOJ or any other Governmental Body in connection with any such request, inquiry, investigation, action or Legal Proceeding (and if in writing, furnish the other party with a copy of such communication), (iii) to the extent reasonably practicable, consult in advance and cooperate with the other Parties and consider in good faith the views of the other Parties in connection with any analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal to be made or submitted to any Governmental Body, and (iv) except as may be prohibited by any Governmental Body or by any Legal Requirement, provide advance notice of and permit authorized Representatives of the other Party to be present at each meeting or conference with any Governmental Body and to have access to and be consulted in advance in connection with any argument, opinion or proposal to be made or submitted to any Governmental Body.

6.3 Company Equity Awards.

(a) Prior to the Offer Acceptance Time, the Company shall take all actions (including obtaining any necessary determinations and/or resolutions of the Board of Directors of the Company or a committee thereof) that may be necessary (under the 2006 Plan and award agreements pursuant to which

Company Equity Awards are outstanding or otherwise) to (i) cause the treatment (as applicable) of each unexercised Company Option then outstanding as set forth in Section 2.8(a), (ii) terminate the 2006 Plan (except as otherwise agreed by Parent and a holder thereof) effective as of and contingent upon the Effective Time, and (iii) cause, as of the Effective Time, each unexpired and unexercised Company Option then outstanding as of immediately prior to the Effective Time (and each plan, if any, under which any Company Equity Award may be granted except, with respect to any such plan, as otherwise agreed by Parent and a holder thereof) to be cancelled, terminated and extinguished, subject, if applicable, to payment pursuant to Section 2.8.

6.4 Employee Benefits. For a period of one year following the Effective Time, Parent shall provide, or cause to be provided, to each employee of the Company who is employed by the Company as of immediately prior to the Effective Time and who continues to be actively employed (without any material break in service) by the Surviving Corporation (or any Affiliate thereof) during such one year period (each, a “*Continuing Employee*”) base salary (or base wages, as the case may be) no less favorable than the base salary (or base wages) provided to such Continuing Employee immediately prior to the execution of this Agreement, and short-term cash incentive compensation opportunities and health and welfare benefits (excluding any severance benefits, defined benefit pension benefits, retiree medical benefits, transaction or retention bonuses and equity based compensation) that are substantially comparable in the aggregate to such base salary and base wages, short-term cash incentive compensation opportunities and health and welfare benefits (excluding any severance benefits, defined benefit pension benefits, retiree medical benefits, transaction or retention bonuses and equity based compensation) provided to similarly situated employees of Parent. Without limiting the foregoing:

(a) With respect to any accrued but unused personal, sick or vacation time to which any Continuing Employee is entitled pursuant to the personal, sick or vacation policies applicable to such Continuing Employee immediately prior to the Effective Time, Parent shall, or shall cause the Surviving Corporation to and instruct its Affiliates to, as applicable (and without duplication of benefits), honor such accrued personal, sick or vacation time and allow such Continuing Employee to use such accrued personal, sick or vacation time in accordance with the practice and policies of the Company and without limiting their ability to accrue personal, sick or vacation time under Parent practices and policies.

(b) Parent agrees that all Continuing Employees shall be eligible to continue to participate in the Surviving Corporation’s health and welfare benefit plans (to the same extent such Continuing Employees were eligible to participate under the Company’s health and welfare benefit plans immediately prior to the Effective Time or to the same extent as similarly situated employees of Parent and its Subsidiaries, as applicable); *provided, however*, that (i) nothing in this Section 6.4 or elsewhere in this Agreement shall limit the right of Parent or the Surviving Corporation to amend or terminate any such health or welfare benefit plan at any time and (ii) if Parent or the Surviving Corporation terminates any such health or welfare benefit plan, then the Continuing Employees shall be eligible to participate in the Parent’s health and welfare benefit plans to the extent that coverage under such plans is replacing comparable coverage under an Employee Plan in which such Continuing Employee participated immediately before the Effective Time or to the extent as similarly situated employees of Parent and its Subsidiaries, as applicable. To the extent that service is relevant for eligibility to participate in, but not for purpose of benefit accrual under, any health or welfare benefit plan of Parent and/or the Surviving Corporation, then Parent shall (A) waive all limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Continuing Employees, to the extent that such conditions, exclusions and waiting periods would not apply under a similar employee benefit plan in which such employees participated prior to the Effective Time, and (B) ensure that such health or welfare benefit plan shall, for purposes of eligibility, deductibles, co-payments and out-of-pocket maximums, credit Continuing Employees for service and

amounts paid prior to the Effective Time with the Company to the same extent that such service and amounts paid was recognized prior to the Effective Time under the corresponding health or welfare benefit plan of the Company. Nothing in this Section 6.4 or elsewhere in this Agreement shall be construed to create a right in any employee to employment with Parent, the Surviving Corporation or any other Affiliate of the Surviving Corporation and the employment of each Continuing Employee shall be “at will” employment.

(c) The provisions of this Section 6.4 are solely for the benefit of the Parties to this Agreement, and no provision of this Section 6.4 is intended to, or shall, constitute the establishment or adoption of or an amendment to any employee benefit plan for purposes of ERISA or otherwise and no current or former employee or any other individual associated therewith shall be regarded for any purpose as a third party beneficiary of the Agreement or have the right to enforce the provisions hereof.

6.5 Termination of Company 401(k) Plan. Contingent upon the Merger Closing Date, the Company shall take all necessary actions to terminate the Company 401(k) Plan, with such termination effective as of no later than the date immediately preceding the Merger Closing Date. The Company shall provide Parent with a copy of any resolutions or other corporate action (the form and substance of which shall be subject to review and approval by Parent, which will not be unreasonably withheld or delayed) evidencing that the Company 401(k) Plan will be terminated effective as of no later than the date immediately preceding the Merger Closing Date, contingent upon the Merger Closing Date, and will adopt any necessary amendments to the Company 401(k) Plan to effect such termination. Prior to and conditioned upon termination of the Company 401(k) Plan, the Company shall take any action necessary to fully vest any and all unvested amounts of the accounts of all participants in the Company 401(k) Plan that are impacted by such termination.

6.6 Indemnification of Officers and Directors.

(a) All rights to indemnification by the Company existing in favor of those Persons who are directors and officers of the Company as of the date of this Agreement (the “*Indemnified Persons*”) for their acts and omissions occurring prior to the Effective Time, as provided in the Certificate of Incorporation and bylaws of the Company (as in effect as of the date of this Agreement) and as provided in the indemnification agreements between the Company and said Indemnified Persons (as set forth on Part 6.6(a) of the Company Disclosure Schedule and in effect as of the date of this Agreement) in the forms made available by the Company to Parent or Parent’s Representatives prior to the date of this Agreement, shall survive the Merger and shall be observed by the Surviving Corporation and its Subsidiaries to the fullest extent available under Delaware law for a period of six years from the Effective Time, and any claim made requesting indemnification pursuant to such indemnification rights within such six-year period shall continue to be subject to this Section 6.6(a) and the indemnification rights provided under this Section 6.6(a) until disposition of such claim.

(b) From the Effective Time until the sixth anniversary of the Effective Time, the Surviving Corporation shall maintain in effect, the existing policy of directors’ and officers’ liability insurance maintained by the Company as of the date of this Agreement (an accurate and complete copy of which has been made available by the Company to Parent or Parent’s Representatives prior to the date of this Agreement) for the benefit of the Indemnified Persons who are currently covered by such existing policy with respect to their acts and omissions occurring prior to the Effective Time in their capacities as directors and officers of the Company (as applicable), on terms with respect to coverage, deductibles and amounts no less favorable than the existing policy (or at or prior to the Effective Time Parent or the Company may (through a nationally recognized insurance broker approved by Parent (such approval not to be unreasonably withheld, delayed or conditioned) purchase a six-year “tail” policy for the existing policy effective as of the Effective Time

and, if such “tail policy” has been obtained, it shall be deemed to satisfy all obligations to obtain and/or maintain insurance pursuant to this Section 6.6(b)); *provided, however*, that in no event shall the Acquired Corporations expend, or shall the Surviving Corporation be required to expend, an aggregate amount in excess of 300% of the annual premium currently payable by the Company with respect to such current policy, it being understood that if the total premiums payable for such insurance coverage exceeds such amount, the Company or the Surviving Corporation, as applicable, shall obtain a policy with the greatest coverage available for a cost equal to such amount.

(c) In the event Parent or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or Entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, Parent shall ensure that the successors and assigns of Parent or the Surviving Corporation, as the case may be, or at Parent’s option, Parent, shall assume the obligations set forth in this Section 6.6.

(d) The provisions of this Section 6.6 shall survive the acceptance of Shares for payment pursuant to the Offer and the consummation of the Merger and are (i) intended to be for the benefit of, and will be enforceable by, each of the Indemnified Persons and their successors, assigns and heirs and (ii) in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by contract or otherwise. Unless required by applicable Legal Requirement, this Section 6.6 may not be amended, altered or repealed after the Offer Acceptance Time in such a manner as to adversely affect the rights of any Indemnified Person or any of their successors, assigns or heirs without the prior written consent of the affected Indemnified Person.

6.7 Retention Plan. Prior to the Closing, the Company’s Board of Directors shall be permitted to take all actions contemplated by Section 3 of the Retention Plan, provided that the determination of the amount of “Net Proceeds”, as defined in the Retention Plan, shall not be determined without the prior consent of Parent, not to be unreasonably withheld. The Company shall use its commercially reasonable efforts to cause each Participant, as defined in the Retention Plan, to execute and deliver a Participation Agreement with respect to its participation such Retention Plan. Parent shall, or shall cause the Surviving Corporation to, fund the Bonus Pool (as defined in the Retention Plan) and pay the amounts allocated thereunder in accordance with Section 2.8 of this Agreement and the terms of the Retention Plan.

6.8 Securityholder Litigation. The Company shall give Parent the right to review and comment on all material filings or responses to be made by the Company in connection with any litigation against the Company and/or its directors relating to the Transactions, the right to participate (at Parent’s expense) in such litigation, and the right to consult on the settlement with respect to such litigation, and the Company shall in good faith take such comments into account, and, no such settlement shall be agreed to without Parent’s prior written consent (such consent not to be unreasonably withheld, conditioned or delayed). The Company shall promptly notify Parent of any such litigation and shall keep Parent informed on a current basis with respect to the status thereof.

6.9 Additional Agreements. Without limitation or contravention of the provisions of Section 6.2, and subject to the terms and conditions of this Agreement, Parent and the Company shall use reasonable best efforts to take, or cause to be taken, all actions necessary to consummate the Offer and the Merger and make effective the other Transactions. Without limiting the generality of the foregoing, subject to the terms and conditions of this Agreement, each Party to this Agreement shall (i) make all filings (if any) and give all notices (if any) required to be made and given by such Party in connection with the Offer and the Merger and the other Transactions; (ii) use reasonable best efforts to obtain each Consent (if any) required to be

obtained pursuant to any applicable Legal Requirement or Material Contract by such Party in connection with the Transactions; and (iii) use reasonable best efforts to lift any restraint, injunction or other legal bar to the Offer or the Merger brought by any third Person against such Party. The Company shall promptly deliver to Parent a copy of each such filing made, each such notice given and each such Consent obtained by the Company during the Pre-Closing Period.

6.10 Disclosure. The initial press release relating to this Agreement shall be a joint press release issued by the Company and Parent and thereafter Parent and the Company shall consult with each other before issuing any further press release(s) or otherwise making any public statement or making any announcement to Company Associates (to the extent not previously issued or made in accordance with this Agreement) with respect to the Offer, the Merger, this Agreement or any of the other Transactions and shall not issue any such press release, public statement or announcement to Company Associates without the other Party's written consent. Notwithstanding the foregoing: (a) each Party may, without such consultation or consent, make any public statement in response to questions from the press, analysts, investors or those attending industry conferences, make internal announcements to employees and make disclosures in Company SEC Documents, so long as such statements are consistent with previous press releases, public disclosures or public statements made jointly by the parties (or individually, if approved by the other Party), (b) a Party may, without the prior consent of the other Party hereto but subject to giving advance notice to the other Party, issue any such press release or make any such public announcement or statement as may be required by Legal Requirement; and (c) the Company need not consult with Parent in connection with such portion of any press release, public statement or filing to be issued or made pursuant to Section 5.3(e) or with respect to any Company Adverse Change Recommendation.

6.11 Takeover Laws; Advice of Changes.

(a) If any Takeover Law may become, or may purport to be, applicable to the Transactions, each of Parent and the Company and the members of their respective Boards of Directors shall use their respective reasonable best efforts to grant such approvals and take such actions as are necessary so that the transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms and conditions contemplated hereby and otherwise act to lawfully eliminate the effect of any Takeover Law on any of the Transactions.

(b) The Company will give prompt notice to Parent (and will subsequently keep the other informed on a current basis of any developments related to such notice) upon its becoming aware of the occurrence or existence of any fact, event or circumstance that (i) has had or would reasonably be expected to result in any Material Adverse Effect with respect to it and (ii) is reasonably likely to result in any of the conditions set forth in Section 7 or **Annex I** not being able to be satisfied prior to the End Date. Parent will give prompt notice to the Company (and will subsequently keep the other informed on a current basis of any developments related to such notice) upon its becoming aware of the occurrence or existence of any fact, event or circumstance that (i) has had or would reasonably be expected to have a Parent Material Adverse Effect or (ii) is reasonably likely to result in any of the conditions set forth in Section 7 not being able to be satisfied prior to the End Date.

6.12 Section 16 Matters. The Company, and the Company's Board of Directors, shall, to the extent necessary, take appropriate action, prior to or as of the Offer Acceptance Time, to approve, for purposes of Section 16(b) of the Exchange Act, the disposition and cancellation or deemed disposition and cancellation of shares of Company Common Stock, Company Options and Company Warrants in the Transactions by applicable individuals and to cause such dispositions and/or cancellations to be exempt under Rule 16b-3 promulgated under the Exchange Act.

6.13 Rule 14d-10 Matters. Prior to the Offer Acceptance Time and to the extent permitted by applicable Legal Requirements, the Compensation Committee of the Company's Board of Directors, at a meeting duly called and held, will approve, as an "employment compensation, severance or other employee benefit arrangement" within the meaning of Rule 14d-10(d)(2) under the Exchange Act, each agreement, arrangement or understanding between Purchaser, the Company or their respective Affiliates and any of the officers, directors or employees of the Company that are effective as of the date of this Agreement or are entered into after the date of this Agreement and prior to the Offer Acceptance Time pursuant to which compensation is paid to such officer, director or employee and will take all other action reasonably necessary to satisfy the requirements of the non-exclusive safe harbor set forth in Rule 14d-10(d)(2) under the Exchange Act.

6.14 Stock Exchange Delisting; Deregistration. Prior to the Closing Date, the Company shall cooperate with Parent and use its reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under applicable laws and rules and policies of the OTC to enable the delisting by the Surviving Corporation of the Shares from the OTC and the deregistration of the Shares under the Exchange Act as promptly as practicable after the Effective Time, and in any event no more than ten (10) days after the Closing Date.

6.15 Purchaser Stockholder Consent. Immediately following the execution of this Agreement, Parent shall execute and deliver, in accordance with Section 228 of the DGCL and in its capacity as the sole stockholder of Purchaser, a written consent adopting this Agreement (the "**Parent Consent**").

SECTION 7. CONDITIONS PRECEDENT TO THE MERGER

The obligations of the parties to effect the Merger are subject to the satisfaction, at or prior to the Closing, of each of the following conditions:

7.1 No Restraints. There shall not have been issued by any court of competent jurisdiction and remain in effect any temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Merger, nor shall any Legal Requirement or order promulgated, entered, enforced, enacted, issued or deemed applicable to the Merger by any Governmental Body which directly or indirectly prohibits, or makes illegal the consummation of the Merger; *provided, however*, that no Party shall be permitted to invoke this Section 7.1 unless it shall have taken all actions required under this Agreement to have any such order lifted.

7.2 Consummation of Offer. Purchaser (or Parent on Purchaser's behalf) shall have accepted for payment and paid for all of the Shares validly tendered pursuant to the Offer and not withdrawn.

SECTION 8. TERMINATION

8.1 Termination. This Agreement may be terminated prior to the Effective Time:

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

(b) by either Parent or the Company if a court of competent jurisdiction or other Governmental Body shall have issued a decree or ruling, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the acceptance for payment of Shares pursuant to the Offer or the Merger or making consummation of the Offer or the Merger illegal, which order, decree, ruling or other action shall be final and nonappealable; *provided, however*, that a Party shall not be

permitted to terminate this Agreement pursuant to this Section 8.1(b) if the issuance of such final and nonappealable order, decree, ruling or other action is attributable to a failure on the part of such Party to perform in any material respect any covenant or obligation in this Agreement required to be performed by such Party at or prior to the Effective Time;

(c) by Parent at any time prior to the Offer Acceptance Time, if, whether or not permitted to do so: (i) the Company's Board of Directors shall have failed to include the Company Board Recommendation in the Schedule 14D-9 when mailed, or shall have effected a Company Adverse Change Recommendation; (ii) the Board of Directors of the Company shall have failed to publicly reaffirm its recommendation of this Agreement within ten (10) business days after Parent so requests in writing, *provided that*, Parent may only make such request once every thirty (30) days or, in the event of a public disclosure of an Acquisition Proposal, one time with respect thereto; (iii) in the case of a tender offer or exchange offer subject to Regulation 14D under the Exchange Act (other than by Parent and its Affiliates), the Company's Board of Directors fails to recommend, in a Solicitation/Recommendation Statement on Schedule 14D-9, rejection of such tender offer or exchange offer within ten (10) business days of the commencement of such tender offer or exchange offer; or (iv) any Acquired Corporation shall have materially and intentionally breached any of its obligations under Section 5.3(b); *provided that* Parent's right to terminate this Agreement pursuant to this Section 8.1(c) in respect of any of the foregoing events shall expire at 5:00 p.m. (San Francisco, CA time) on the tenth (10th) business day following the date on which such right of termination was exercisable with respect to such event;

(d) by either Parent or the Company if the Offer Acceptance Time shall not have occurred on or prior to the close of business on September 11, 2017 (such date, the "**End Date**"); *provided, however*, that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(d) if the failure of the Offer Acceptance Time to occur prior to the End Date is principally attributable to the failure on the part of such Party to perform in any material respect any covenant or obligation in this Agreement required to be performed by such Party;

(e) by the Company, at any time prior to the Offer Acceptance Time, in order to accept a Superior Offer and, substantially concurrent with such termination, to enter into a binding written definitive acquisition agreement providing for the consummation of a transaction constituting a Superior Offer (a "**Specified Agreement**"), *provided that* the Company has complied in all material respects with the requirements of Section 5.3 and Section 6.1(b)(i) and concurrently pays the Termination Fee as provided in Section 8.3(b);

(f) by Parent at any time prior to the Offer Acceptance Time, if a breach of any representation or warranty contained in this Agreement or failure to perform any covenant or obligation in this Agreement on the part of the Company shall have occurred such that the condition set forth in clause "(b)" or "(c)" of **Annex I** would not be satisfied and cannot be cured by the Company by the End Date, or if capable of being cured, shall not have been cured within thirty (30) days of the date Parent gives the Company notice of such breach or failure to perform or, if earlier, the End Date; *provided, however*, that, Parent shall not have the right to terminate this Agreement pursuant to this Section 8.1(f) if either Parent or Purchaser is then in material breach of any representation, warranty, covenant or obligation hereunder;

(g) by the Company at any time prior to the Offer Acceptance Time, if a breach of any representation or warranty contained in this Agreement or failure to perform any covenant or obligation in this Agreement on the part of Parent or Purchaser shall have occurred, in each case if such breach or failure has had or would reasonably be expected to prevent Parent or Purchaser from consummating the Transactions and such breach or failure cannot be satisfied and cannot be cured by Parent or Purchaser, as applicable, by

the End Date, or if capable of being cured, shall not have been cured within thirty (30) days of the date the Company gives Parent notice of such breach or failure to perform, or, if earlier, the End Date; *provided, however*, that, the Company shall not have the right to terminate this Agreement pursuant to this Section 8.1 (g) if the Company is then in material breach of any representation, warranty, covenant or obligation hereunder and such breach would cause or reasonably be expected to cause the Offer Conditions not to be satisfied or the Offer to expire without the acceptance for payment of Shares pursuant to the Offer; or

(h) by the Company if Purchaser shall have failed to purchase all Shares validly tendered (and not validly withdrawn) as of the expiration of the Offer (as may be extended); *provided, however*, that the Company shall not be permitted to terminate this Agreement pursuant to this Section 8.1(h) if the failure of Purchaser to consummate the Offer in accordance with the terms of this Agreement is attributable to a failure on the part of the Company to perform any covenant or obligation under this Agreement.

8.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 8.1, written notice thereof shall be given to the other Party or Parties, specifying the provision hereof pursuant to which such termination is made, and this Agreement shall be of no further force or effect and there shall be no liability on the part of Parent, Purchaser or the Company or their respective directors, officers and Affiliates following any such termination; *provided, however*, that (a) this Section 8.2, Section 8.3 and Section 9 shall survive the termination of this Agreement and shall remain in full force and effect, (b) the Confidentiality Agreement shall survive the termination of this Agreement and shall remain in full force and effect in accordance with its terms; and (c) the termination of this Agreement shall not relieve any Party from any liability for common law fraud or any willful and material breach of this Agreement prior to the date of termination. Nothing shall limit or prevent any Party from exercising any rights or remedies it may have under Section 9.5(b) in lieu of terminating this Agreement pursuant to Section 8.1.

8.3 Expenses; Termination Fee.

(a) Except as set forth in this Section 8.3, all fees and expenses incurred in connection with this Agreement and the Transactions shall be paid by the Party incurring such expenses, whether or not the Offer and Merger are consummated.

(b) In the event that:

(i) this Agreement is terminated by the Company pursuant to Section 8.1(e);

(ii) this Agreement is terminated by Parent pursuant to Section 8.1(c); or

(iii) (x) this Agreement is terminated pursuant to Section 8.1(d), (y) any Person shall have publicly disclosed an Acquisition Proposal after the date hereof and prior to such termination (unless publicly withdrawn prior to such termination) and (z) within twelve (12) months of such termination the Company shall have (A) entered into a definitive agreement with respect to any Acquisition Proposal or recommended any Acquisition Proposal to its stockholders, and in each case such proposal is thereafter consummated, regardless of whether such consummation occurs within such twelve (12) month period) or (B) consummated any Acquisition Proposal (provided that for purposes of this clause (z) the references to “20%” in the definition of “*Acquisition Proposal*” shall be deemed to be references to “50%”);

then, in any such event under clause “(i)”, “(ii)” or “(iii)” of this Section 8.3(b), the Company shall pay to Parent or its designee the Termination Fee by wire transfer of same day funds (x) in the case of Section 8.3 (b)(i), concurrently with the termination of this Agreement and execution of the Specified Agreement (or if the Specified Agreement is executed on a day that is not a business day, the next business day), (y) in the

case of Section 8.3(b)(ii), within two (2) business days after such termination or (z) in the case of Section 8.3(b)(iii), concurrently with the consummation of the Acquisition Proposal referred to in subclause (iii)(z) above; it being understood that in no event shall the Company be required to pay the Termination Fee on more than one occasion. As used herein, “**Termination Fee**” shall mean a cash amount equal to \$100,000. In the event that Parent or its designee shall receive full payment pursuant to this Section 8.3(b), the receipt of the Termination Fee shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by Parent, Purchaser, any of their respective Affiliates or any other Person in connection with this Agreement (and the termination hereof), the transactions contemplated hereby (and the abandonment thereof) or any matter forming the basis for such termination, and none of Parent, Purchaser, any of their respective Affiliates (collectively, “**Parent Related Parties**”) or any other Person shall be entitled to bring or maintain any claim, action or proceeding against the Company or any of its Affiliates arising out of or in connection with this Agreement, any of the Transactions or any matters forming the basis for such termination; *provided, however*, that nothing in this Section 8.3(b) shall limit the rights of Parent or Purchaser under Section 9.5(b) or with respect to common law fraud or any willful and material breach of this Agreement by the Company prior to the date of termination.

(c) Parent’s right to receive payment from the Company of the Termination Fee pursuant to Section 8.3(b) and any payments pursuant to Section 8.3(d) shall be the sole and exclusive remedy of the Parent Related Parties against the Company and any of their respective former, current or future officers, directors, partners, stockholders, optionholders, managers, members or Affiliates (collectively, “**Company Related Parties**”) for any loss suffered as a result of the failure of the Offer or the Merger to be consummated or for a breach or failure to perform hereunder or otherwise, and upon payment of such amount(s), none of the Company Related Parties shall have any further liability or obligation relating to or arising out of this Agreement or the Transactions; provided that nothing in this Section 8.3(c) shall relieve the Company or any Company Related Party from any liability for common law fraud or any willful and material breach of this Agreement prior to the date of termination.

(d) The Parties acknowledge that the agreements contained in this Section 8.3 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, the Parties would not enter into this Agreement; accordingly, if the Company fails to timely pay any amount due pursuant to this Section 8.3, and, in order to obtain the payment, Parent commences a Legal Proceeding which results in a judgment against the Company, the Company shall pay Parent its reasonable and documented costs and expenses (including reasonable and documented attorneys’ fees) in connection with such suit, together with interest on such amount at the prime rate as published in the Wall Street Journal in effect on the date such payment was required to be made through the date such payment was actually received.

SECTION 9. MISCELLANEOUS PROVISIONS

9.1 Amendment. Prior to the Offer Acceptance Time, subject to Section 6.6(d), this Agreement may be amended with the approval of the respective Boards of Directors of the Company and Parent at any time. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

9.2 Waiver. No failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement,

unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

9.3 No Survival of Representations and Warranties. None of the representations and warranties contained in this Agreement, the Company Disclosure Schedule or in any certificate or schedule or other document delivered pursuant to this Agreement shall survive the Merger.

9.4 Entire Agreement; Counterparts. This Agreement and the other agreements and schedules referred to herein constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties, with respect to the subject matter hereof and thereof; *provided, however*, that the Confidentiality Agreement shall not be superseded and shall remain in full force and effect; *provided, further, that*, if the Effective Time occurs, the Confidentiality Agreement shall automatically terminate and be of no further force and effect. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by PDF shall be sufficient to bind the parties to the terms and conditions of this Agreement.

9.5 Applicable Legal Requirements; Jurisdiction; Specific Performance; Remedies.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Subject to Section 9.5(c), in any action or proceeding arising out of or relating to this Agreement, or any of the transactions contemplated by this Agreement: (i) each of the Parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Chancery Court of the State of Delaware and any state appellate court therefrom or, if such court lacks subject matter jurisdiction, the United States District Court sitting in New Castle County in the State of Delaware, (it being agreed that the consents to jurisdiction and venue set forth in this Section 9.5(a) shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the Parties hereto); and (ii) each of the Parties irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which such Party is to receive notice in accordance with Section 9.8. The Parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements; *provided, however*, that nothing in the foregoing shall restrict any Party's rights to seek any post-judgment relief regarding, or any appeal from, such final trial court judgment.

(b) The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, may occur in the event that the Parties hereto do not perform their obligations under the provisions of this Agreement in accordance with its specified terms or otherwise breach such provisions. Subject to the following sentence, the Parties acknowledge and agree that (i) the Parties shall be entitled to seek an injunction or injunctions, specific performance, or other equitable relief, to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 9.5(a) without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, (ii) the provisions set forth in Section 8.3 (A) are not intended to and do not adequately compensate for the harm that would result from a breach of this Agreement and (B) shall not be construed to diminish or otherwise impair in any respect any Party's right to specific enforcement and (iii) the right of specific performance is an integral part of the transactions contemplated by this Agreement and without that right, neither the Company nor Parent would have entered

into this Agreement. Each of the Parties hereto agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the other Parties hereto have an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity. The Parties hereto acknowledge and agree that any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 9.5(b) shall not be required to provide any bond or other security in connection with any such order or injunction.

(c) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9.6 Assignability. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties hereto and their respective successors and permitted assigns; *provided, however,* that neither this Agreement nor any of the rights hereunder may be assigned without the prior written consent of the other Parties hereto, and any attempted assignment of this Agreement or any of such rights without such consent shall be void and of no effect; *provided, further, however,* that Parent or Purchaser may assign this Agreement to any of their Affiliates (*provided* that such assignment shall not impede or delay the consummation of the Transactions or otherwise impede the rights of the stockholders of the Company under this Agreement); provided that no such assignment or pledge permitted pursuant to this Section 9.6 shall relieve Parent of its obligations hereunder.

9.7 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement; except for: (i) if the Offer Acceptance Time occurs (A) the right of the Company's stockholders to receive the Offer Price or Merger Consideration, as applicable, (B) the right of the holders of Company Equity Awards to receive the Merger Consideration pursuant to Section 2.8 and (C) the right of the Participants (as defined in the Retention Plan) to receive their Bonus Amounts pursuant to Section 2.8 and the Retention Plan; (ii) the provisions set forth in Section 6.6 of this Agreement and (iii) the limitations on liability of the Company Related Parties set forth in Section 8.3(c).

9.8 Notices. Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received (a) upon receipt when delivered by hand, (b) two business days after being sent by registered mail or by courier or express delivery service, (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed, or (d) if sent by email transmission after 6:00 p.m. recipient's local time and receipt is confirmed, the business day following the date of transmission; provided that in each case the notice or other communication is sent to the physical address or email address set forth beneath the name of such Party below (or to such other physical address or email address as such Party shall have specified in a written notice given to the other Parties hereto):

if to Parent or Purchaser (or following the Effective Time, the Company):

Sientra, Inc.
420 S. Fairview, Suite 200
Santa Barbara CA 93117
Attn: Jeffrey M. Nugent
Chief Executive Officer
Email: jeff.nugent@sientra.com

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

Cooley LLP
Attn: C. Thomas Hopkins
1333 2nd Street, Suite 400
Santa Monica, CA 90401
Email: thopkins@cooley.com

and

Cooley LLP
Attn: Jamie Leigh
101 California Street, 5th Floor
San Francisco, CA 94111
Email: jleigh@cooley.com

if to the Company (prior to the Effective Time):

Miramar Labs, Inc.
2790 Walsh Avenue
Santa Clara, CA 95051
Attn: Michael Kleine, CEO
Email: mkleine@miramarlabs.com

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

Wilson Sonsini Goodrich & Rosati, P.C.
Attn: Philip Oettinger
650 Page Mill Road
Palo Alto, CA 94304
Email: poettinger@wsgr.com

and:

Wilson Sonsini Goodrich & Rosati, P.C.
Attn: Robert T. Ishii
One Market Plaza
Spear Tower, Suite 3300
San Francisco, CA 94105
Email: rishii@wsgr.com

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

9.10 Construction.

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

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

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

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

(e) As used in this Agreement, the term “ordinary course of business” means the ordinary and usual course of normal day-to-day operations of the Company and its Subsidiaries consistent with past practice and custom (including, as applicable, with respect to quantity and frequency).

(f) The phrases “provided to,” “furnished to,” “made available,” and phrases of similar import when used herein, unless the context otherwise requires, shall mean that a copy of the information or material referred to has been provided to the party to whom such information or material is to be provided, including by means of being provided for review in the virtual dataroom set up by the Company in connection with this Agreement (but only such information or material is posted and made available in such data room at least one business days prior to the date of this Agreement).

(g) References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; provided that with respect to any agreement or contract listed on any schedules hereto, all such amendments, modifications or supplements must also be listed in the appropriate schedule.

(h) References to any Person include the successors and permitted assigns of that Person.

(i) The bold-faced headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

[Signature page follows]

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

SIENTRA, INC.

By: /s/ Jeffrey M. Nugent

Name: Jeffrey M. Nugent

Title: Chairman of the Board and Chief
Executive Officer

DESERT ACQUISITION CORPORATION

By: /s/ Charles Huiner

Name: Charles Huiner

Title: Chief Operating Officer

Exhibit A
CERTAIN DEFINITIONS

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

“**2006 Plan**” means the Company’s 2006 Stock Plan, including all amendments and/or restatements thereto.

“**Acceleration Date**” is defined in Section 2.8(a) of the Agreement.

“**Acceptable Confidentiality Agreement**” is defined in Section 5.3(a) of the Agreement.

“**Acquired Corporations**” shall mean the Company and each of its Subsidiaries, collectively.

“**Acquisition Proposal**” shall mean any proposal, offer, inquiry or other indication of interest (whether or not in writing) from any Person (other than Parent and its Affiliates) or “group”, within the meaning of Section 23(d) of the Exchange Act, relating to, in a single transaction or series of related transactions, any (a) acquisition, transfer, lease or license of assets of the Company and its Subsidiaries equal to 20% or more of the Company’s consolidated assets or to which 20% or more of the Company’s consolidated revenues or earnings are attributable, (b) issuance or acquisition of 20% or more of the outstanding Company Common Stock, (c) recapitalization, tender offer or exchange offer that if consummated would result in any Person or group beneficially owning 20% or more of the outstanding Company Common Stock (or, with respect to any Person who beneficially owns Company Outstanding Stock as of the date hereof, 20% or more than the percentage of Company Common Stock already owned thereby as of the date hereof) or (d) merger, consolidation, amalgamation, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its Subsidiaries that if consummated would result in any Person or group beneficially owning 20% or more of the outstanding Company Common Stock or controlling 20% or more of the consolidated assets, revenues or earnings of the Company, in each case, other than the Transactions (or, with respect to any Person who beneficially owns Company Outstanding Stock as of the date hereof, 20% or more than the percentage of such Company Common Stock, assets revenues or earning already owned or controlled thereby as of the date hereof).

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

“**Agreement**” shall mean the Agreement and Plan of Merger to which this **Exhibit A** is attached, as it may be amended from time to time.

“**Anti-Corruption Laws**” shall mean the Foreign Corrupt Practices Act of 1977, as amended, the Anti-Kickback Act of 1986, as amended, and the UK Bribery Act of 2010 or any applicable Laws of similar effect.

“**Antitrust Laws**” shall mean the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other applicable laws and regulations (including non U.S. laws and regulations) issued by a Governmental Body that are designed or intended to preserve and protect competition, prohibit and restrict monopolization, attempted monopolization, restraint of trade and abuse of dominant position, or to prevent acquisitions, mergers or other business combinations and similar transactions, the effect of which may be to lessen or impede competition or to tend to create or strengthen a dominant position or to create a monopoly.

“**Balance Sheet**” is defined in Section 3.6 of the Agreement.

“**Book-Entry Shares**” shall mean non-certificated shares of Company Common Stock represented by book-entry.

“**business day**” shall mean means a day except a Saturday, a Sunday or other day on which banks in the City of New York are authorized or required by Legal Requirements to be closed.

“**Cash Portion**” is defined in Recital A of the Agreement.

“**Certificates**” is defined in Section 2.6(b) of the Agreement.

“**Change in Circumstance**” shall mean any material event or development or material change in circumstances with respect to the Company that was (a) neither known to the Company’s Board of Directors nor reasonably foreseeable as of or prior to the date hereof and (b) does not relate to (i) any Acquisition Proposal, (ii) any events, changes or circumstances relating to Parent, Purchaser or any of their Affiliates, (iii) clearance of the Merger under the Antitrust Laws or (iv) the mere fact, in and of itself, that the Company meets or exceeds any internal or analysts’ published projections, forecasts, estimates or predictions of revenue, earnings or other financial or operating metrics for any period ending on or after the date hereof, or changes after the date of the Agreement in the market price or trading volume of the Company Common Stock or the credit rating of the Company.

“**Change of Control Payment**” is defined in Section 3.9(a)(vii) of the Agreement.

“**Closing**” is defined in Section 2.3(a) of the Agreement.

“**Closing Date**” is defined in Section 2.3(a) of the Agreement.

“**Closing Option Payment**” is defined in Section 2.8(a).

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

“**Company**” is defined in the preamble to the Agreement.

“**Company Adverse Change Recommendation**” is defined in Section 6.1(a) of the Agreement.

“**Company Associate**” shall mean each current and former officer or other employee, or individual who is an independent contractor, consultant or director of or to any of the Acquired Corporations.

“**Company Board Recommendation**” is defined in Recital C of the Agreement.

“**Company Common Stock**” shall mean the common stock, \$0.001 par value per share, of the Company.

“**Company Contract**” shall mean any Contract to which an Acquired Corporation is a party.

“**Company Disclosure Documents**” is defined in Section 3.4(g) of the Agreement.

“**Company Disclosure Schedule**” shall mean the disclosure schedule that has been prepared by the Company in accordance with the requirements of the Agreement and that has been delivered by the Company to Parent on the date of the Agreement.

“**Company Employee Agreement**” shall mean each management, employment, severance, retention, transaction bonus, change in control, consulting, relocation, repatriation or expatriation agreement or other Contract between: (a) the Company or any Subsidiary and (b) any Company Associate (other than any Company Associate that is part time or paid on an hourly basis), other than any such Contract that is terminable “at will” (or following a notice period imposed by applicable Legal Requirements) without any obligation on the part of the Company or a Subsidiary to make any severance, termination, change in control or similar payment or to provide any benefit.

“**Company Equity Award**” shall mean any award of compensation (including deferred compensation) that is required under the terms of such existing award to be, or which may be, paid or settled in Company Common Stock (including, for the avoidance of doubt, all Company Options).

“**Company IP**” shall mean (a) all Intellectual Property Rights that are owned or purported to be owned by an Acquired Corporation, (b) all Intellectual Property Rights licensed to or purported to be licensed to an Acquired Corporation and (c) all other Intellectual Property Rights that are used by an Acquired Corporation in the operation of their respective businesses as currently conducted, or as currently planned by the Company to be conducted.

“**Company Lease**” shall mean any Company Contract pursuant to which any Acquired Corporation leases or subleases Leased Real Property from another Person.

“**Company Options**” shall mean all options to purchase shares of Company Common Stock (whether granted by the Company pursuant to the 2006 Plan, assumed by the Company in connection with any merger, acquisition or similar transaction or otherwise issued or granted).

“**Company Related Parties**” is defined in Section 8.3(c) of the Agreement.

“**Company Returns**” is defined in Section 3.14(a) of the Agreement.

“**Company SEC Documents**” is defined in Section 3.4(a) of the Agreement.

“**Company Warrants**” shall mean all warrants to purchase shares of Company Common Stock issued by the Company.

“**Confidentiality Agreement**” is defined in Section 5.1 of the Agreement.

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

“**Continuing Employees**” is defined in Section 6.4 of the Agreement.

“**Contract**” shall mean any written, oral or other agreement, contract, subcontract, lease, understanding, instrument, bond, debenture, note, option, warrant, warranty, purchase order, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature.

“**CVR Agreement**” is defined in Recital A of the Agreement.

“**CVR Portion**” is defined in Recital A of the Agreement.

“**Depository Agent**” is defined in Section 2.6(a) of the Agreement.

“**Determination Notice**” is defined in Section 6.1(b)(i) of the Agreement.

“**DGCL**” shall mean the Delaware General Corporation Law, as amended.

“**Dissenting Shares**” is defined in Section 2.7 of the Agreement.

“**DOJ**” shall mean the U.S. Department of Justice.

“**DOL**” is defined in Section 3.16(c) of the Agreement.

“**Effective Time**” is defined in Section 2.3(b) of the Agreement.

“**Employee Option**” shall mean each Company Option granted to a holder thereof in such holder’s capacity as an employee service provider of the Company or any of its Subsidiaries for applicable employment Tax purposes.

“**Employee Plan**” shall mean any management, employment, severance, retention, transaction bonus, change in control, consulting, relocation, repatriation or expatriation, salary, bonus, vacation, deferred compensation, employee loan, incentive compensation, stock purchase, stock option, severance pay, termination pay, death and disability benefits, hospitalization, medical, life or other insurance, flexible benefits, supplemental unemployment benefits, profit-sharing, pension or retirement plan, policy, program, agreement or arrangement and each other “employee benefit plan ” within the meaning of Section 3(3) of ERISA, policy, program, agreement or

arrangement maintained, contributed to or required to be contributed to by any of the Acquired Corporations for the benefit of any current or former Company Associate or with respect to which the Acquired Corporations has any current or future liability.

“Encumbrance” shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

“End Date” is defined in Section 8.1(e) of the Agreement.

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

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

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Expiration Date” is defined in Section 1.1(c) of the Agreement.

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

“FDCA” shall mean the Federal Food, Drug and Cosmetics Act, as amended, and all related rules, regulations and guidelines

“Extension Deadline” is defined in Section 1.1(c) of the Agreement.

“FTC” shall mean the U.S. Federal Trade Commission.

“GAAP” is defined in Section 3.4(b) of the Agreement.

“Good Clinical Practices” shall have the meaning set forth in the FDCA.

“Governmental Authorization” shall mean any permit, license, certificate, franchise, permission, variance, clearance, registration, qualification or authorization issued, granted, given

or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

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

“**Hazardous Materials**” shall mean any waste, material, or substance that is listed, regulated or defined under any Environmental Law and includes any pollutant, chemical substance, hazardous substance, hazardous waste, special waste, solid waste, asbestos, mold, radioactive material, polychlorinated biphenyls, petroleum or petroleum-derived substance or waste.

“**HSR Act**” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“**In-bound Licenses**” is defined in Section 3.8(f) of the Agreement.

“**In-the-money Option**” is defined in Section 2.8(a) of the Agreement.

“**Indebtedness**” shall mean (a) any indebtedness for borrowed money (including the issuance of any debt security) to any Person other than the Company or any of its wholly owned Subsidiaries, (b) all liabilities in respect of any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which are, and to the extent, required to be classified and accounted for under GAAP as capital leases, (c) any obligations evidenced by notes, bonds, debentures or similar Contracts to any Person other than the Company or any of its wholly owned Subsidiaries, (d) any obligations in respect of letters of credit and bankers’ acceptances (other than letters of credit used as security for leases to the extent not drawn), (e) any obligation under interest rate, currency or commodity derivatives or hedging transaction or (f) any guaranty of any such obligations described in clauses “(a)” through “(e)” of any Person other than the Company or any of its wholly owned Subsidiaries (other than, in any case, accounts payable to trade creditors and accrued expenses, in each case arising in the ordinary course of business).

“**Indemnified Persons**” is defined in Section 6.6(a) of the Agreement.

“**Initial Expiration Date**” is defined in Section 1.1(c) of the Agreement.

“**Intellectual Property Rights**” shall mean and includes all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, software, databases, and mask works; (b) trademarks, service marks, trade dress, logos, trade names and other source identifiers, domain names and URLs and similar rights and any goodwill associated therewith; (c) rights associated with trade secrets, know how, inventions (whether or not patentable), invention disclosures, methods, processes, designs, protocols,

specifications, techniques and other forms of technology; (d) patents and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; (f) rights of privacy and publicity; and (g) all registrations, renewals, extensions, combinations, statutory invention registrations, provisionals, continuations, continuations-in-part, provisionals, divisionals, reexamination certificates and reissues of, and applications for, any of the rights referred to in clauses “(a)” through “(f)” above (whether or not in tangible form and including all tangible embodiments of any of the foregoing, such as samples, studies and summaries), along with all rights to prosecute and perfect the same through administrative prosecution, registration, recordation or other administrative proceedings, and all causes of action and rights to sue or seek other remedies arising from or relating to the foregoing, including the right to receive all proceeds and damages therefrom.

“**Investigation**” is defined in Section 6.2(b) of the Agreement.

“**IRS**” shall mean the Internal Revenue Service.

“**knowledge**” with respect to an Entity shall mean with respect to any matter in question the actual knowledge of such Entity’s executive officers after due inquiry.

“**Leased Real Property**” is defined in Section 3.7(b) of the Agreement.

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

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

Any event, occurrence, circumstance or development shall be deemed to have a “**Material Adverse Effect**” on the Acquired Corporations if such event, occurrence, circumstance or development (whether or not any such matter, considered together with all other matters, would constitute a breach of the representations, warranties, covenants or agreements of the Company set forth in the Agreement) has had or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, assets, financial condition or results of operations of the Acquired Corporations taken as a whole; *provided, however*, that none of the following shall be deemed in and of themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there is, or would reasonably likely to be, a Material Adverse Effect on the Acquired Corporations for purposes of clause (a) above: (i) any change in the market price or trading volume of the Company’s stock; (ii) any event, occurrence, circumstance or development directly resulting from the announcement or pendency of the Transactions (other than for purposes of any representation or warranty contained in Article III that expressly addresses the consequences resulting from the execution, and delivery of the

Agreement, the announcement or pendency of the Transactions, but subject to disclosures in the applicable sections of the Company Disclosure Schedule); (iii) any event, occurrence, circumstance or development in the industries in which the Acquired Corporations operate or in the economy generally or other general business, financial or market conditions, except to the extent that the Acquired Corporations are adversely affected disproportionately relative to the other participants in such industries or the economy generally, as applicable; (iv) any event, occurrence, circumstance or development arising from or otherwise relating to fluctuations in the value of any currency, except to the extent that such event, circumstance, change or effect disproportionately affects the Acquired Corporations relative to other participants in the industries in which the Acquired Corporations operate or the economy generally, as applicable; (v) any event, occurrence, circumstance or development arising from or otherwise relating to any act of terrorism, war, national or international calamity or any other similar event, except to the extent that such event, occurrence, circumstance or development disproportionately affects the Acquired Corporations relative to other participants in the industries in which the Acquired Corporations operate or the economy generally, as applicable; (vi) the failure of the Company to meet internal or analysts' expectations or projections or the results of operations of the Company; (vii) any adverse effect arising directly from or otherwise directly relating to any action specifically required or permitted to be taken by the Company under the terms of the Agreement or (viii) any event, occurrence, circumstance or development arising from or otherwise relating to any change in, after the date hereof, any Legal Requirement or GAAP (or interpretations of any Legal Requirement or GAAP), except to the extent that such event, occurrence, circumstance or development disproportionately affects the Acquired Corporations relative to other participants in the industries in which the Acquired Corporations operate or the economy generally, as applicable; it being understood that the exceptions in clauses "(i)", and "(vi)" shall not prevent or otherwise affect a determination that the underlying cause of any such decline or failure referred to therein (if not otherwise falling within any of the exceptions provided by clauses "(ii)" through "(vi)" or "(vii)" through "(viii)" hereof) is or would be reasonably have, individually or in the aggregate with any other event, occurrence, circumstance or development, a Material Adverse Effect.

"Material Contract" is defined in Section 3.9(a) of the Agreement.

"Merger" is defined in Recital B of the Agreement.

"Merger Consideration" is defined in Section 2.5(a)(iv) of the Agreement.

"Minimum Condition" is defined in **Annex I** to the Agreement.

"Non-Employee Option" shall mean each Company Option granted to a holder thereof in such holder's capacity as a non-employee service provider of the Company or any of its Subsidiaries for applicable employment Tax purposes.

"Note Purchase Agreement" shall mean the Note Purchase Agreement, dated January 27, 2017, as amended June 11, 2017, by and among the Company and certain investors named therein.

"Offer" is defined in Recital A of the Agreement.

“Offer Acceptance Time” is defined in Section 6.1(b) of the Agreement.

“Offer Commencement Date” shall mean the date on which Purchaser commences the Offer, within the meaning of Rule 14d-2 under the Exchange Act.

“Offer Conditions” is defined in Section 1.1(b) of the Agreement.

“Offer Documents” is defined in Section 1.1(e) of the Agreement.

“Offer Price” is defined in Recital A of the Agreement.

“Offer to Purchase” is defined in Section 1.1(b) of the Agreement.

“Out-bound Licenses” is defined in Section 3.8(f) of the Agreement.

“Out-of-the-money Option” is defined in Section 2.8(a) of the Agreement.

“OTC” shall mean the OTCQB Marketplace operated by OTC Markets Group, Inc.

“Parent” is defined in the preamble to the Agreement.

“Parent Material Adverse Effect” shall mean any effect, change, event or occurrence that would, individually or in the aggregate, prevent or materially delay the ability of Parent or Purchaser to consummate the Transactions on the terms set forth herein.

“Parent Related Parties” is defined in Section 8.3(b) of the Agreement.

“Parent Consent” is defined in Section 6.15 of the Agreement.

“Parties” shall mean Parent, Purchaser and the Company.

“Paying Agent” is defined in Section 2.6(a) of the Agreement.

“Payment Fund” is defined in Section 2.6(a) of the Agreement.

“Payoff Amount” is defined in Section 2.9 of the Agreement.

“Payoff Letter” is defined in Section 2.9 of the Agreement.

“Payroll Date” is defined in Section 2.8(d).

“Permitted Encumbrance” shall mean (a) any Encumbrance that arises out of Taxes not in default and payable without penalty or interest or the validity of which is being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP on the appropriate Balance Sheet, (b) any Encumbrance representing the rights of customers, suppliers and subcontractors in the ordinary course of business under the terms of any Contracts to which the relevant party is a party or under general principles of commercial or government contract law (including mechanics’, materialmen’s, carriers’, workmen’s,

warehouseman's, repairmen's, landlords' and similar liens granted or which arise in the ordinary course of business), (c) in the case of any Contract, Encumbrances that are restrictions against the transfer or assignment thereof that are included in the terms of such Contract, and (d) in the case of real property, Encumbrances that are easements, rights-of-way, encroachments, restrictions, conditions and other similar Encumbrances incurred or suffered in the ordinary course of business and which, individually or in the aggregate, do not and would not materially impair the use (or contemplated use), utility or value of the applicable real property or otherwise materially impair the present or contemplated business operations at such location, or zoning, entitlement, building and other land use regulations imposed by Governmental Bodies having jurisdiction over such real property or that are otherwise set forth on a title report.

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

"Pre-Closing Period" is defined in Section 5.1 of the Agreement.

"Principal Stockholders" is defined in Recital F of the Agreement.

"Purchaser" is defined in the preamble to the Agreement.

"Registered IP" shall mean all Intellectual Property Rights that are registered or issued under the authority of any Governmental Body, including all patents, registered copyrights, registered mask works, registered trademarks, service marks and trade dress, registered domain names, and all applications for any of the foregoing.

"Release" shall mean any presence, emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Materials from any source into or upon the environment, including the air, soil, improvements, surface water, groundwater, the sewer, septic system, storm drain, publicly owned treatment works, or waste treatment, storage, or disposal systems.

"Representatives" shall mean officers, directors, employees, attorneys, accountants, investment bankers, consultants, agents, financial advisors, other advisors and other representatives.

"Retention Plan" means the Company's Key Employee Retention Plan.

"Rights Agent" is defined in Section 2.6(a) of the Agreement.

"Schedule 14D-9" is defined in Section 1.2(a) of the Agreement.

"Schedule TO" is defined in Section 1.1(e) of the Agreement.

"SEC" shall mean the United States Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Shares" is defined in Recital A of the Agreement.

“**Specified Agreement**” is defined in Section 8.1(f) of the Agreement.

“**Stockholder List Date**” is defined in Section 1.2(b).

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

“**Superior Offer**” shall mean an unsolicited *bona fide* written Acquisition Proposal that the Board of Directors of the Company determines, in its good faith judgment, after consultation with its outside legal counsel and its financial advisor of nationally recognized reputation, if consummated, would result in a transaction more favorable to the Company’s stockholders (solely in their capacity as such) than the transactions contemplated by the Agreement (including any changes to the Agreement offered by Parent in response to such an Acquisition Proposal) taking into account at the time of determination all relevant circumstances, including the Person making the proposal and other aspects of the Acquisition Proposal that the Company’s Board of Directors deems relevant, including the various legal, financial and regulatory aspects of the proposal and whether it is reasonably likely to be consummated in accordance with its terms (including certainty of financing, if applicable, and likelihood of consummation); *provided* that for purposes of the definition of “Superior Offer”, the references to “20%” in the definition of Acquisition Proposal shall be deemed to be references to “80%.”

“**Surviving Corporation**” is defined in Recital B of the Agreement.

“**SVB Loan Agreement**” shall mean the Loan and Security Agreement, dated August 7, 2015, by and among the Company, Oxford Finance LLC, and Silicon Valley Bank

“**Takeover Laws**” shall mean any “moratorium,” “control share acquisition,” “fair price,” “supermajority,” “affiliate transactions,” or “business combination statute or regulation” or other similar state anti-takeover laws and regulations.

“**Tax**” shall mean any tax (including any income tax, franchise tax, profits, capital gains tax, gross receipts tax, value-added tax, ad valorem tax, surtax, severance, license, premium, windfall profits tax, estimated tax, occupation, employment or unemployment tax, national health insurance tax, disability tax, environmental tax, excise tax, transfer tax, registration tax, stamp tax, sales tax, goods and services tax, use tax, property tax, business tax, alternative or add-on minimum tax, withholding tax or payroll tax), escheat obligation, levy, assessment, tariff, duty (including any customs duty) or other tax or other like assessment or charge of any kind whatsoever, including any charge or amount (including any fine, penalty or interest) related to any tax, imposed, assessed or collected by or under the authority of any Governmental Body.

“**Tax Return**” shall mean any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information filed with or submitted to, or required to be filed with or submitted to, any

Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax, and any attachments thereto or amendments thereof.

“*Tender Agreements*” is defined in Recital F of the Agreement.

“*Termination Fee*” is defined in Section 8.3(b) of the Agreement.

“*Transactions*” shall mean (a) the execution and delivery of the Agreement and (b) all of the transactions contemplated by the Agreement, including the Offer and the Merger.

Exhibit B
SURVIVING CORPORATION CERTIFICATE OF INCORPORATION

ANNEX I

CONDITIONS TO THE OFFER

The obligation of Purchaser to accept for payment and pay for Shares validly tendered (and not withdrawn) pursuant to the Offer is subject to the satisfaction of the conditions set forth in clauses “(a)” through “(h)” below. Accordingly, notwithstanding any other provision of the Offer or this Agreement to the contrary, Purchaser shall not be required to accept for payment or (subject to any applicable rules and regulations of the SEC, including Rule 14e-1(c) under the Exchange Act) pay for, and may delay the acceptance for payment of, or (subject to any such rules and regulations) the payment for, any tendered Shares, if: (A) the Minimum Condition shall not be satisfied by 8:00 a.m. Eastern Time, on the Expiration Date of the Offer; or (B) any of the additional conditions set forth in clauses “(b)” through “(h)” below shall not be satisfied or waived in writing by Parent:

(a) there shall have been validly tendered and not validly withdrawn Shares that, considered together with all other Shares (if any) beneficially owned by Parent and its Affiliates, represent one more than 50% of the sum of (x) the total number of Shares outstanding at the time of the expiration of the Offer plus (y) the aggregate number of Shares issuable to holders of Company Options from which the Company has received notices of exercise prior to the expiration of the Offer (and as to which Shares have not yet been issued to such exercising holders of Company Options), plus (z) the aggregate number of Shares issuable to holders of Company Warrants that were automatically exercised in accordance with Section 2.8(b) of this Agreement or from which the Company has received notices of exercise prior to the expiration of the Offer (and, in each case, as to which Shares have not yet been issued to such exercising holders of Company Warrants) (the “*Minimum Condition*”);

(b) (1) the representations and warranties of the Company set forth in Sections 3.3(a), 3.3(c) (first sentence), 3.3(d) and 3.3(e) (Capitalization, Etc.), 3.20 (Authority; Binding Nature of Agreement), 3.22 (Merger Approval) and 3.25 (Financial Advisor) of the Agreement shall have been accurate in all respects as of the date of the Agreement and shall be accurate in all respects at and as of the Closing Date as if made on and as of such Closing Date, except (other than a result of a willful breach by the Company) where the failure to be so accurate in all respects would not reasonably be expected to result in additional cost, expense or liability to the Company, Parent and their Affiliates, individually or in the aggregate that is more than \$250,000 (it being understood that, for purposes of determining the accuracy of such representations and warranties, (A) any update of or modification to the Company Disclosure Schedule made or purported to have been made after the date of the Agreement shall be disregarded and (B) the truth and correctness of those representations or warranties that address matters only as of a specific date shall be measured (subject to the applicable materiality standard as set forth in this clause (b)(i)) only as of such date);

(i) the representations and warranties of the Company set forth in Sections 3.3 (Capitalization, Etc.) (other than Sections 3.3(a), 3.3(c) (first sentence), 3.3(d) and 3.3(e)) of the Agreement) shall have been accurate in all material respects as of the date of the Agreement, and shall be accurate in all material respects at and as of the Offer Acceptance Time as if made on and as of such time (it being understood that, for purposes of determining the accuracy of such

representations and warranties, (A) all “Material Adverse Effect” qualifications and other materiality qualifications contained in such representations and warranties shall be disregarded, (B) any update of or modification to the Company Disclosure Schedule made or purported to have been made after the date of the Agreement shall be disregarded and (C) the truth and correctness of those representations or warranties that address matters only as of a specific date shall be measured (subject to the applicable materiality standard as set forth in this clause (b)(ii)) only as of such date);

(ii) the representations and warranties of the Company set forth in clause “b” of the first sentence of Section 3.5 (Absence of Changes) shall have been accurate in all respects as of the date of the Agreement and shall be accurate in all respects at and as of the Offer Acceptance Time as if made on and as of such time (it being understood that any update of or modification to the Company Disclosure Schedule made or purported to have been made after the date of the Agreement shall be disregarded);

(iii) the representations and warranties of the Company set forth in the Agreement (other than those referred to in clauses “(b)(i)”, “(b)(ii)” or “(b)(iii)” above) shall have been accurate in all respects as of the date of the Agreement, and shall be accurate in all respects at and as of the Offer Acceptance Time as if made on and as of such time, except that any inaccuracies in such representations and warranties will be disregarded if the circumstances giving rise to all such inaccuracies (considered collectively) do not constitute, and would not reasonably be expected to have, a Material Adverse Effect (it being understood that, for purposes of determining the accuracy of such representations and warranties, (A) all “Material Adverse Effect” qualifications and other materiality qualifications contained in such representations and warranties shall be disregarded, (B) any update of or modification to the Company Disclosure Schedule made or purported to have been made after the date of the Agreement shall be disregarded and (C) the truth and correctness of those representations or warranties that address matters only as of a specific date shall be measured only as of such date);

(c) the Company shall have complied with or performed in all material respects the covenants and agreements that the Company is required to comply with or perform at or prior to the Offer Acceptance Time;

(d) since the date hereof, there shall not have been any Material Adverse Effect that shall be continuing as of the Offer Acceptance Time;

(e) Parent and Purchaser shall have received a certificate executed on behalf of the Company by the Company’s Chief Executive Officer and Chief Financial Officer confirming that the conditions set forth in clauses “(b),” “(c)” and “(d)” of this **Annex I** have been duly satisfied;

(f) there shall not have been issued by any court of competent jurisdiction or remain in effect any temporary restraining order, preliminary or permanent injunction or other order preventing the acquisition of or payment for Shares pursuant to the Offer nor shall any action have been taken, or any Legal Requirement or order promulgated, entered, enforced, enacted, issued or deemed applicable to the Offer or the Merger by any Governmental Body which directly or indirectly prohibits, or makes illegal, the acquisition of or payment for Shares pursuant to the Offer, or the consummation of the Merger;

(g) there shall not be pending any Legal Proceeding by a Governmental Body having authority over Parent, Purchaser or the Company (1) challenging or seeking to restrain or prohibit the consummation of the Offer or the Merger, (2) seeking to restrain or prohibit Parent's or its Affiliates' ownership or operation of the business of the Company, or of Parent or its Affiliates, or, (3) in connection with the Offer or the Merger, seeking any of the actions described in the second sentence of Section 6.2(a) or seeking to impose material limitations on the ability of Parent or any of its Affiliates effectively to exercise full right of ownership of the Shares;

(h) the Note Purchase Agreement shall not have been amended in accordance with its terms since the date of the Agreement; and

(i) this Agreement shall not have been terminated in accordance with its terms.

The foregoing conditions are for the sole benefit of Parent and Purchaser and (except for the Minimum Condition) may be waived by Parent and Purchaser, in whole or in part at any time and from time to time, in the sole discretion of Parent and Purchaser. The failure by Parent or Purchaser at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

ANNEX II

FORM OF CONTINGENT VALUE RIGHT AGREEMENT

ANNEX III
FORM OF TENDER AGREEMENT

**SECOND AMENDED AND RESTATED BYLAWS OF
MIRAMAR LABS, INC.**

(as amended and restated on June 11, 2017 and effective as of such date)

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SECOND AMENDED AND RESTATED BYLAWS OF MIRAMAR LABS, INC.

ARTICLE I — CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of Miramar Labs, Inc. shall be fixed in the corporation's certificate of incorporation. References in these bylaws to the certificate of incorporation shall mean the certificate of incorporation of the corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock.

1.2 OTHER OFFICES

The corporation's board of directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II — MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors. The board of directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the corporation's principal executive office.

2.2 ANNUAL MEETING

The annual meeting of stockholders shall be held on such date, at such time, and at such place (if any) within or without the State of Delaware as shall be designated from time to time by the board of directors and stated in the corporation's notice of the meeting. At the annual meeting, directors shall be elected and any other proper business may be transacted. The first annual meeting of stockholders shall be held in 2017.

2.3 SPECIAL MEETING

(i) A special meeting of the stockholders, other than those required by statute, may be called at any time only by (A) the board of directors, (B) the chairperson of the board of directors, (C) the chief executive officer or (D) the president (in the absence of a chief executive officer). A special meeting of the stockholders may not be called by any other person or persons. The board of directors may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

(ii) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before

the meeting by or at the direction of the board of directors, the chairperson of the board of directors, the chief executive officer or the president (in the absence of a chief executive officer). Nothing contained in this Section 2.3 (ii) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

2.4 ADVANCE NOTICE PROCEDURES

(i) *Advance Notice of Stockholder Business.* At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) pursuant to the corporation's proxy materials with respect to such meeting, (B) by or at the direction of the board of directors, or (C) by a stockholder of the corporation who (1) is a stockholder of record at the time of the giving of the notice required by this Section 2.4 (i) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has timely complied in proper written form with the notice procedures set forth in this Section 2.4(i). In addition, for business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to these bylaws and applicable law. Except for proposals properly made in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations), and included in the notice of meeting given by or at the direction of the board of directors, for the avoidance of doubt, clause (C) above shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders.

(a) To comply with clause (C) of Section 2.4(i) above, a stockholder's notice must set forth all information required under this Section 2.4(i) and must be timely received by the secretary of the corporation. To be timely, a stockholder's notice must be received by the secretary at the principal executive offices of the corporation not later than the 45th day nor earlier than the 75th day before the one-year anniversary of the date on which the corporation first mailed its proxy materials or a notice of availability of proxy materials (whichever is earlier) for the preceding year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year's annual meeting, then, for notice by the stockholder to be timely, it must be so received by the secretary not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of (i) the 90th day prior to such annual meeting, or (ii) the tenth day following the day on which Public Announcement (as defined below) of the date of such annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described in this Section 2.4(i)(a). "**Public Announcement**" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or any successor thereto (the "**1934 Act**").

(b) To be in proper written form, a stockholder's notice to the secretary must set forth as to each matter of business the stockholder intends to bring before the annual meeting: (1) a brief description of the business intended to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (2) the name and address, as they appear on the corporation's books, of the stockholder proposing such business and any Stockholder Associated Person (as defined below), (3) the class and number of shares of the corporation that are held of record or are beneficially owned by the stockholder or any Stockholder Associated Person and any derivative positions held or beneficially held by the stockholder or any Stockholder Associated Person, (4) whether and the extent to which any hedging or other transaction or

series of transactions has been entered into by or on behalf of such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, (5) any material interest of the stockholder or a Stockholder Associated Person in such business, and (6) a statement whether either such stockholder or any Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry the proposal (such information provided and statements made as required by clauses (1) through (6), a "**Business Solicitation Statement**"). In addition, to be in proper written form, a stockholder's notice to the secretary must be supplemented not later than five days following the record date for notice of the meeting to disclose the information contained in clauses (3) and (4) above as of the record date for notice of the meeting. For purposes of this Section 2.4, a "**Stockholder Associated Person**" of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the corporation owned of record or beneficially by such stockholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii).

(c) Without exception, no business shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 2.4(i) and, if applicable, Section 2.4(ii). In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder or a Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Business Solicitation Statement applicable to such business or if the Business Solicitation Statement applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting and in accordance with the provisions of this Section 2.4(i), and, if the chairperson should so determine, he or she shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(ii) *Advance Notice of Director Nominations at Annual Meetings.* Notwithstanding anything in these bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 2.4(ii) shall be eligible for election or re-election as directors at an annual meeting of stockholders. Nominations of persons for election or re-election to the board of directors of the corporation shall be made at an annual meeting of stockholders only (A) by or at the direction of the board of directors or (B) by a stockholder of the corporation who (1) was a stockholder of record at the time of the giving of the notice required by this Section 2.4(ii) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has complied with the notice procedures set forth in this Section 2.4(ii). In addition to any other applicable requirements, for a nomination to be made by a stockholder, the stockholder must have given timely notice thereof in proper written form to the secretary of the corporation.

(a) To comply with clause (B) of Section 2.4(ii) above, a nomination to be made by a stockholder must set forth all information required under this Section 2.4(ii) and must be received by the secretary of the corporation at the principal executive offices of the corporation at the time set forth in, and in accordance with, the final three sentences of Section 2.4(i)(a) above.

(b) To be in proper written form, such stockholder's notice to the secretary must set forth:

(1) as to each person (a "**nominee**") whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of the nominee, (B) the principal occupation or employment of the nominee, (C) the class and number of shares of the corporation that are held of record or are beneficially owned by the nominee and any derivative positions held or beneficially held by the nominee, (D) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the nominee with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of the nominee, (E) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, (F) a written statement executed by the nominee acknowledging that as a director of the corporation, the nominee will owe a fiduciary duty under Delaware law with respect to the corporation and its stockholders, and (G) any other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election or re-election of the nominee as a director, or that is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation the nominee's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected or re-elected, as the case may be); and

(2) as to such stockholder giving notice, (A) the information required to be provided pursuant to clauses (2) through (5) of Section 2.4(i)(b) above, and the supplement referenced in the second sentence of Section 2.4(i)(b) above (except that the references to "business" in such clauses shall instead refer to nominations of directors for purposes of this paragraph), and (B) a statement whether either such stockholder or Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of a number of the corporation's voting shares reasonably believed by such stockholder or Stockholder Associated Person to be necessary to elect or re-elect such nominee(s) (such information provided and statements made as required by clauses (A) and (B) above, a "**Nominee Solicitation Statement**").

(c) At the request of the board of directors, any person nominated by a stockholder for election or re-election as a director must furnish to the secretary of the corporation (1) that information required to be set forth in the stockholder's notice of nomination of such person as a director as of a date subsequent to the date on which the notice of such person's nomination was given and (2) such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director or audit committee financial expert of the corporation under applicable law, securities exchange rule or regulation, or any publicly-disclosed corporate governance guideline or committee charter of the corporation and (3) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee; in the absence of the furnishing of such information if requested, such stockholder's nomination shall not be considered in proper form pursuant to this Section 2.4(ii).

(d) Without exception, no person shall be eligible for election or re-election as a director of the corporation at an annual meeting of stockholders unless nominated in accordance with the provisions set forth in this Section 2.4(ii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement

applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the annual meeting, and the defective nomination shall be disregarded.

(iii) *Advance Notice of Director Nominations for Special Meetings.*

(a) For a special meeting of stockholders at which directors are to be elected or re-elected, nominations of persons for election or re-election to the board of directors shall be made only (1) by or at the direction of the board of directors or (2) by any stockholder of the corporation who (A) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(iii) and on the record date for the determination of stockholders entitled to vote at the special meeting and (B) delivers a timely written notice of the nomination to the secretary of the corporation that includes the information set forth in Sections 2.4(ii)(b) and (ii)(c) above. To be timely, such notice must be received by the secretary at the principal executive offices of the corporation not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected or re-elected at such meeting. A person shall not be eligible for election or re-election as a director at a special meeting unless the person is nominated (i) by or at the direction of the board of directors or (ii) by a stockholder in accordance with the notice procedures set forth in this Section 2.4(iii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading.

(b) The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination or business was not made in accordance with the procedures prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination or business shall be disregarded.

(iv) *Other Requirements and Rights.* In addition to the foregoing provisions of this Section 2.4, a stockholder must also comply with all applicable requirements of state law and of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.4. Nothing in this Section 2.4 shall be deemed to affect any rights of:

(a) a stockholder to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act; or

(b) the corporation to omit a proposal from the corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act.

2.5 NOTICE OF STOCKHOLDERS' MEETINGS

Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and

vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the written notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

2.6 QUORUM

The holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws.

If a quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) if the chairperson does not act, the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and Section 2.11 of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

2.8 CONDUCT OF BUSINESS

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business. The chairperson of any meeting of stockholders shall be designated by the board of directors; in the absence of such designation, the chairperson of the board, if any, the chief executive officer (in the absence of the chairperson) or the president (in the absence of the chairperson of the board and the chief executive officer), or in their absence any other executive officer of the corporation, shall serve as chairperson of the stockholder meeting.

2.9 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise required by law, the certificate of incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation or these bylaws.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

To the fullest extent permitted by law, whenever any action is required or permitted to be taken at a meeting of stockholders, by law, by the certificate of incorporation or by these bylaws, such action may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

2.11 RECORD DATES

In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the board of directors may fix a new

record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.11 at the adjourned meeting.

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

2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A written proxy may be in the form of any means of electronic transmission which sets forth or is submitted with information from which it can be determined that the means of electronic transmission was authorized by the person.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *provided, however*, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date. The stockholder list shall be arranged in alphabetical order and show the address of each stockholder and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose related to the meeting for a period of at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation's principal place of business. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

2.14 INSPECTORS OF ELECTION

Before any meeting of stockholders, the board of directors shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The number of inspectors shall be either one (1) or three (3). If any person appointed as inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy.

Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed and designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each share, (ii) determine the shares of capital stock of the corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, (v) certify their determination of the number of shares of capital stock of the corporation represented at the meeting and such inspector or inspectors' count of all votes and ballots, (vi) determine when the polls shall close; (vii) determine the result; and (viii) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspector or inspectors may consider such information as is permitted by applicable law. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

ARTICLE III — DIRECTORS

3.1 POWERS

The business and affairs of the corporation shall be managed by or under the direction of the board of directors, except as may be otherwise provided in the DGCL or the certificate of incorporation.

3.2 NUMBER OF DIRECTORS

The board of directors shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time solely by resolution of the board of directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors. If so provided in the certificate of incorporation, the directors of the corporation shall be divided into three classes.

3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation; *provided, however*, that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the director. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Acceptance of such resignation shall not be necessary to make it effective. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors shall be filled only by a majority of the directors then in office, even if the directors in office represent less than a quorum, or by a sole remaining director. If the directors are divided into classes, a person so elected by the directors then in office to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board of directors (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The board of directors may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairperson of the board of directors, the chief executive officer, the president, the secretary or a majority of the authorized number of directors, at such times and places as he or she or they shall designate.

Notice of the time and place of special meetings shall be:

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile; or
- (iv) sent by electronic mail,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the corporation's principal executive office) nor the purpose of the meeting.

3.8 QUORUM; VOTING

At all meetings of the board of directors, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board of directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board of directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

3.11 REMOVAL OF DIRECTORS

A director may be removed from office by the stockholders of the corporation only for cause.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

ARTICLE IV — COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The board of directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in these bylaws, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the corporation.

4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (i) Section 3.5 (place of meetings and meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings; notice);
- (iv) Section 3.8 (quorum; voting);
- (v) Section 3.9 (action without a meeting); and
- (vi) Section 7.5 (waiver of notice)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members. In addition, the following provisions shall apply:

- (i) the time of regular meetings of committees may be determined by resolution of the committee;
- (ii) special meetings of committees may also be called by resolution of the committee; and
- (iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

4.4 SUBCOMMITTEES

Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the board of directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE V — OFFICERS

5.1 OFFICERS

The officers of the corporation shall be a president and a secretary. The corporation may also have, at the discretion of the board of directors, a chairperson of the board of directors, a vice chairperson of the board of directors, a chief executive officer, a chief financial officer or treasurer, one or more vice presidents, one or

more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS

The board of directors shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Section 5 for the regular election to such office.

5.3 SUBORDINATE OFFICERS

The board of directors may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board of directors or, except in the case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written or electronic notice to the corporation; *provided, however*, that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the officer. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the corporation shall be filled by the board of directors or as provided in Section 5.3.

5.6 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairperson of the board of directors, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 AUTHORITY AND DUTIES OF OFFICERS

All officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the board of directors.

ARTICLE VI — STOCK

6.1 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of the corporation shall be represented by certificates, provided that the board of directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson of the board of directors or vice-chairperson of the board of directors, or the president or a vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The corporation shall not have power to issue a certificate in bearer form.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly-paid shares, or upon the books and records of the corporation in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully-paid shares, the corporation shall declare a dividend upon partly-paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section 6.2 or Sections 156, 202(a)

or 218(a) of the DGCL or with respect to this section 6.2 a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 LOST, STOLEN OR DESTROYED CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 DIVIDENDS

The board of directors, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the corporation's capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock, subject to the provisions of the certificate of incorporation.

The board of directors may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer; *provided, however,* that such succession, assignment or authority to transfer is not prohibited by the certificate of incorporation, these bylaws, applicable law or contract.

6.6 STOCK TRANSFER AGREEMENTS

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.7 REGISTERED STOCKHOLDERS

The corporation:

- (i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;
- (ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and
- (iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII — MANNER OF GIVING NOTICE AND WAIVER

7.1 NOTICE OF STOCKHOLDERS' MEETINGS

Notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the corporation's records. An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

7.2 NOTICE BY ELECTRONIC TRANSMISSION

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:

- (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and
- (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

- (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

- (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;
- (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and
- (iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

An “**electronic transmission**” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

7.3 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

7.4 NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.5 WAIVER OF NOTICE

Whenever notice is required to be given to stockholders, directors or other persons under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any

regular or special meeting of the stockholders or the board of directors, as the case may be, need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII — INDEMNIFICATION

8.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”) (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director of the corporation or an officer of the corporation, or while a director of the corporation or officer of the corporation is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person’s conduct was unlawful.

8.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the corporation, or while a director or officer of the corporation is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

8.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

8.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article VIII, the corporation shall have power to indemnify its employees and its agents to the extent not prohibited by the DGCL or other applicable law. The board of directors shall have the power to delegate the determination of whether employees or agents shall be indemnified to such person or persons as the board of determines.

8.5 ADVANCED PAYMENT OF EXPENSES

Expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VIII or the DGCL. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems reasonably appropriate and shall be subject to the corporation's expense guidelines. The right to advancement of expenses shall not apply to any claim for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding referenced in Section 8.6(ii) or 8.6(iii) prior to a determination that the person is not entitled to be indemnified by the corporation.

8.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 8.3 and the DGCL, the corporation shall not be obligated to indemnify any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the corporation, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"), or the payment to the corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(iv) initiated by such person against the corporation or its directors, officers, employees, agents or other indemnitees, unless (a) the board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (b) the corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the corporation under applicable law, (c) otherwise required to be made under Section 8.7 or (d) otherwise required by applicable law; or

(v) if prohibited by applicable law; *provided, however*, that if any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Article VIII (including, without limitation, each portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

8.7 DETERMINATION; CLAIM

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within 90 days after receipt by the corporation of the written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. The corporation shall indemnify such person against any and all expenses that are incurred by such person in connection with any action for indemnification or advancement of expenses from the corporation under this Article VIII, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the corporation shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

8.8 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

8.9 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of the DGCL.

8.10 SURVIVAL

The rights to indemnification and advancement of expenses conferred by this Article VIII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

8.11 EFFECT OF REPEAL OR MODIFICATION

Any amendment, alteration or repeal of this Article VIII shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to such amendment, alteration or repeal.

8.12 CERTAIN DEFINITIONS

For purposes of this Article VIII, references to the “**corporation**” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to “**other enterprises**” shall include employee benefit plans; references to “**finances**” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “**serving at the request of the corporation**” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the corporation**” as referred to in this Article VIII.

ARTICLE IX — GENERAL MATTERS

9.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the certificate of incorporation or these bylaws, the board of directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

9.2 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

9.3 SEAL

The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the board of directors. The corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

9.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “**person**” includes both an entity and a natural person.

ARTICLE X — AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote; *provided, however*, that the affirmative vote of the holders of at least 66 2/3% of the total voting power of outstanding voting securities, voting together as a single class, shall be required for the stockholders of the corporation to alter, amend or repeal, or adopt any bylaw inconsistent with, the following provisions of these bylaws: Article II, Sections 3.1, 3.2, 3.4 and 3.11 of Article III, Article VIII, this Article X, and Article XI (including, without limitation, any such Article or Section as renumbered as a result of any amendment, alteration, change, repeal, or adoption of any other Bylaw). The board of directors shall also have the power to adopt, amend or repeal bylaws; *provided, however*, that a bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.

ARTICLE XI — FORUM SELECTION

11.1 FORUM SELECTION

Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the corporation to the corporation or the corporation’s stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or the corporation’s Amended and Restated Certificate of Incorporation or these Second Amended and Restated Bylaws, or (iv) any action asserting a claim governed by the internal affairs doctrine (each an “**Action**”) shall be the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, any federal or other state court within the State of Delaware) (a “**Chosen Court**”), except for, as to each Action, any claim as to which the Chosen Court determines that there is an indispensable party named as a defendant not subject to the personal jurisdiction of the Chosen Court (and each such indispensable party does not consent to the personal jurisdiction of the Chosen Court within ten (10) days following such determination). Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this bylaw.

11.2 PERSONAL JURISDICTION

If any Action is filed in a court other than a Chosen Court (a “**Foreign Action**”) in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of each Chosen Court in connection with any action brought in any such court to enforce Section 11.1 (an “**FSC Enforcement Action**”) and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder.

11.3 SAVINGS

If any provision or provisions of this Article XI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XI (including, without limitation, each portion of any sentence of this Article XI containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

MIRAMAR LABS, INC.

CERTIFICATE OF AMENDMENT OF BYLAWS

The undersigned hereby certifies that he or she is the duly elected, qualified, and acting Secretary or Assistant Secretary of Miramar Labs, Inc., a Delaware corporation and that the foregoing bylaws, comprising 24 pages, were amended and restated on June 11, 2017 by the corporation's board of directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand this June 11, 2017.

/s/ Philip Oettinger

Assistant Secretary

[FORM OF]

TENDER AND SUPPORT AGREEMENT

THIS TENDER AND SUPPORT AGREEMENT, dated as of June 11, 2017 (this “**Agreement**”), is by and among Sientra, Inc., a Delaware corporation (“**Parent**”), Desert Acquisition Corporation, a Delaware corporation and wholly owned subsidiary of Parent (“**Purchaser**”), and _____ (“**Stockholder**”).

RECITALS

A. Stockholder is a holder of record and the “beneficial owner” (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)) of certain shares of common stock of, Miramar Labs, Inc., a Delaware corporation (the “**Company**”).

B. Parent, Purchaser and Company are entering into an Agreement and Plan of Merger of even date herewith (the “**Merger Agreement**”) which provides, among other things, for Purchaser to commence a tender offer (the “**Offer**”) for all of the issued and outstanding shares of common stock, par value \$0.001 per share, of the Company (the “**Shares**”) and following the consummation of the Offer, the merger of Purchaser with and into the Company, with the Company continuing as the surviving corporation and as an indirect wholly owned subsidiary of Parent (the “**Merger**”), upon the terms and subject to the conditions set forth in the Merger Agreement.

C. As a condition to the willingness of Parent and Purchaser to enter into the Merger Agreement and as an inducement in consideration therefor, Stockholder has agreed to enter into this Agreement and tender and vote Stockholder’s Subject Securities (as defined below) as described herein.

AGREEMENT

The parties to this Agreement, for and in consideration of the foregoing and the mutual covenants, representations, warranties and agreements set forth herein, and intending to be legally bound, hereby agree as follows:

SECTION 1. CERTAIN DEFINITIONS

For purposes of this Agreement:

(a) Capitalized terms used herein that are not defined shall have the respective meanings assigned to those terms in the Merger Agreement.

(b) “**Contract**” means any note, bond, mortgage, indenture, lease, license, permit, contract, commitment, arrangement, understanding, agreement or other instrument or obligations of any kind, including, any voting agreement, proxy arrangement, pledge agreement, stockholder agreement or voting trust, to which Stockholder is a party or by which the Subject Securities are bound.

(c) “*Encumbrance*” means any lien, pledge, hypothecation, security interest, option, right of first refusal, proxies, voting trusts or agreements, or other encumbrance (other than as created by this Agreement or restrictions on transfer under the Securities Act of 1933, as amended).

(d) Stockholder is deemed to “*Own*” or to have acquired “*Ownership*” of a security if Stockholder: (i) is the record owner of such security; or (ii) is the “beneficial owner” (within the meaning of Rule 13d-3 under the Exchange Act) of such security.

(e) “*Subject Securities*” mean: (i) all Shares Owned by Stockholder as of the date of this Agreement; (ii) any Shares issued in respect of or otherwise subject to Company Options; (iii) any Shares issued in respect of or otherwise subject to Company Warrants; and (iv) all additional Shares of which Stockholder acquires Ownership during the Support Period.

(f) “*Support Period*” means the period commencing on (and including) the date of this Agreement and ending on (and including) the Termination Date.

(g) “*Termination Date*” means the earlier of the date upon which:

(i) the Merger Agreement is validly terminated;

(ii) the Merger becomes effective; or

(iii) any amendment or change to the Merger Agreement or the Offer is effected without the Stockholder’s consent that decreases the amount, or changes the form, (except with respect to extensions of the Offer in accordance with the terms of the Merger Agreement) timing, or likelihood of payment of consideration payable to all of the stockholders of the Company pursuant to the terms of the Merger Agreement or the CVR Agreement.

(h) A Person is deemed to have effected a “*Transfer*” of a security if such Person directly or indirectly: (i) sells, pledges, encumbers, grants an option with respect to, transfers or disposes of such security or any interest in such security to any Person other than Parent or Purchaser; (ii) enters into an agreement or commitment contemplating the possible sale of, pledge of, encumbrance of, grant of an option with respect to, transfer of or disposition of such security or any interest therein to any Person other than Parent or Purchaser; or (iii) reduces such Person’s beneficial ownership of, interest in or risk relating to such security.

SECTION 2. TRANSFER OF SUBJECT SECURITIES AND VOTING RIGHTS

2.1 Restriction on Transfer of Subject Securities. Subject to Section 2.3 below, during the Support Period, Stockholder shall not cause or permit any Transfer of any of the Subject Securities to be effected. Without limiting the generality of the foregoing, during the Support Period, Stockholder shall not tender, agree to tender or permit to be tendered any of the Subject Securities in response to or otherwise in connection with any tender or exchange offer other than the Offer.

2.2 Restriction on Transfer of Voting Rights. During the Support Period, Stockholder shall ensure that: (a) none of the Subject Securities is deposited or otherwise transferred into a voting

trust; and (b) no proxy is granted, and no voting agreement or similar agreement is entered into, with respect to any of the Subject Securities with respect to the subject matter of this Agreement.

2.3 Permitted Transfers. Section 2.1 above shall not prohibit a transfer of Subject Securities by Stockholder: (a) if Stockholder is an individual (i) to any member of Stockholder's immediate family, or to a trust for the benefit of Stockholder or any member of Stockholder's immediate family, or (ii) upon the death of Stockholder; (b) if Stockholder is a limited partnership or limited liability company, to a partner or member of Stockholder; (c) if Stockholder is a corporation, to an affiliate under common control with Stockholder or (d) if Parent consents in writing with respect thereto; *provided, however*, that a transfer referred to in this sentence shall be permitted only if (A) as a precondition to such transfer, the transferee agrees in a written document, reasonably satisfactory in form and substance to Parent, to be bound by all of the terms of this Agreement and (B) such transfer occurs no later than three (3) Business Days prior to the Expiration Date.

SECTION 3. TENDER OF SUBJECT SECURITIES

3.1 Tender of Subject Securities. Unless this Agreement shall have been terminated in accordance with its terms, and subject to Section 5, Stockholder hereby agrees to tender the Shares Owned by Stockholder, including Shares acquired after the date hereof (collectively, the "*Tender Shares*"), or cause such Stockholder's Tender Shares to be tendered, into the Offer promptly following, and in any event no later than the tenth (10th) Business Day following the commencement of the Offer. Unless this Agreement shall have been terminated in accordance with its terms, Stockholder will not withdraw the Tender Shares, or cause the Tender Shares to be withdrawn, from the Offer at any time, other than in accordance with Section 5.

3.2 Return of Subject Securities. If (a) the Offer is terminated or withdrawn by Purchaser, (b) the Merger Agreement is terminated prior to the purchase of the Tender Shares in the Offer or (c) Stockholder desires to withdraw any Shares previously tendered in accordance with the terms of Section 3.1, Parent and Purchaser shall promptly return, and shall cause any depository acting on behalf of Parent and Purchaser to return, all (or in the case of the preceding clause (c), any such portion) of the Tender Shares tendered by Stockholder in the Offer to Stockholder.

SECTION 4. VOTING OF SHARES

4.1 Voting Covenant. Subject to the terms of Section 5, Stockholder hereby agrees that, during the Support Period, at any meeting of the stockholders of the Company, however called, and in any action by written consent of stockholders of the Company, unless otherwise directed in writing by Parent, Stockholder shall cause the Shares included in the Subject Securities to be voted:

(a) in favor of (i) the Merger, the execution and delivery by the Company of the Merger Agreement and the adoption and approval of the Merger Agreement and the terms thereof, and (ii) each of the other Transactions;

(b) against any action or agreement that, to Stockholder's knowledge, would result in a breach of any representation, warranty, covenant or obligation of the Company in the Merger

Agreement in a manner that would reasonably be expected to cause a failure of an Offer Condition to be satisfied; and

(c) against the following actions (other than the Merger and the Transactions): (i) any Acquisition Proposal; (ii) any amendment to the Company's certificate of incorporation or bylaws; or (iii) any change in a majority of the board of directors of the Company, in the case of the foregoing clauses (ii) and (iii) other than to the extent such action would not reasonably be expected to prevent the consummation of the Merger or any of the other Transactions or this Agreement.

Subject to the terms of Section 5, during the Support Period, Stockholder shall not enter into any agreement or understanding with any Person to vote or give instructions in a manner inconsistent with clauses "(a)", "(b)" or "(c)" of this Section 4.1.

4.2 Proxy.

(a) Contemporaneously with the execution of this Agreement (i) Stockholder shall deliver to Parent a proxy in the form attached to this Agreement as Exhibit A, which shall be irrevocable (at all times prior to the Termination Date) to the fullest extent permitted by law with respect to the shares referred to therein (the "**Proxy**"); and (ii) Stockholder shall cause to be delivered to Parent an additional proxy (in the form attached hereto as Exhibit A) executed on behalf of the record owner of any outstanding Shares that are owned beneficially (within the meaning of Rules 13d-3 under the Exchange Act), but not of record, by Stockholder.

(b) Stockholder shall not enter into any tender, voting or other such agreement, or grant a proxy or power of attorney, with respect to any of the Subject Securities that is inconsistent with this Agreement or otherwise take any other action with respect to any of the Subject Securities that would restrict, limit or interfere with the performance of any of Stockholder's obligations hereunder.

(c) Parent hereby acknowledges and agrees that the Proxy set forth in this Section 4.2 shall not be exercised to vote, consent or act on any matter except as specifically contemplated by Section 4.1 and Parent agrees not to exercise the Proxy granted herein for any purpose other than the purpose described in Section 4.1.

SECTION 5. COMPANY ADVERSE CHANGE RECOMMENDATION

If the Board of Directors of the Company has effected (and not withdrawn) a Company Adverse Change Recommendation in accordance with the Merger Agreement, then (a) the obligation of Stockholder to tender Stockholder's Tender Shares in the manner set forth in Section 3.1 and (b) the obligation of Stockholder to vote its Shares, and the Proxy granted by Stockholder in accordance with Section 4, shall be modified such that the Stockholder, together with the other stockholders of the Company entering into substantially similar tender and support agreements with Parent on the date hereof (the "*Other Support Agreements*"), shall collectively only be required to tender into the Offer, or to vote in the manner so prescribed, respectively, that number of Shares equal to an aggregate number of Tender Shares which, together with Tender Shares as defined in the Other Support Agreements, equal in the aggregate thirty percent (30%) of the total number of Shares outstanding

as of the expiration of the Offer or the occurrence of such vote, as the case may be (with Stockholder being obligated to tender or vote, as applicable, his pro rata portion thereof).

SECTION 6. WAIVER OF APPRAISAL RIGHTS

Stockholder hereby irrevocably and unconditionally waives, and agrees not to exercise or assert, on its own behalf or on behalf of any other holder of Shares, any rights of appraisal, any dissenters' rights or any similar rights relating to the Merger that Stockholder may have by virtue of, or with respect to, any Subject Securities Owned by Stockholder.

SECTION 7. REPRESENTATIONS AND WARRANTIES OF STOCKHOLDER

Stockholder hereby represents and warrants to each of Parent and Purchaser as follows:

7.1 Authorization, etc. Stockholder has the authority and legal capacity to execute and deliver this Agreement and to perform Stockholder's obligations hereunder. This Agreement has been duly authorized, executed and delivered by Stockholder and, assuming due authorization, execution and delivery by Parent and Purchaser, constitute legal, valid and binding obligations of Stockholder, enforceable against Stockholder in accordance with their terms, subject to (a) laws of general application relating to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other laws affecting enforcement of creditors' rights generally and (b) rules of law governing specific performance, injunctive relief and other equitable remedies. If Stockholder is a corporation, then Stockholder is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was organized. If Stockholder is a general or limited partnership, then Stockholder is a partnership duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was organized.

7.2 No Conflicts or Consents.

(a) The execution and delivery of this Agreement by Stockholder do not, and the performance of this Agreement by Stockholder will not: (i) conflict with or violate any law, rule, regulation, order, decree or judgment applicable to Stockholder or by which Stockholder or any of Stockholder's properties is or may be bound; or (ii) result in or constitute (with or without notice or lapse of time) any breach of or default under, or give to any other Person (with or without notice or lapse of time) any right of termination, amendment, acceleration or cancellation of, or result (with or without notice or lapse of time) in the creation of any Encumbrance on any of the Subject Securities pursuant to, any material Contract to which Stockholder is a party or by which Stockholder or any of Stockholder's Affiliates or properties is or may be bound or affected, in each other than as would not, individually or in the aggregate, prevent or materially delay the performance by Stockholder of any of its obligations under this Agreement.

(b) The execution and delivery of this Agreement by Stockholder do not, and the performance of this Agreement by Stockholder will not, require any filing with, nor any permit, authorization, consent or approval of, any Person, other than (x) as required under the United States Securities Act of 1933, as amended (the "**Securities Act**"), the Securities Exchange Act of 1934 as amended (the "**Exchange Act**"), other similar securities laws and the rules and regulations

promulgated thereunder and (y) where the failure to make such filings or obtain any such permit, authorization, consent or approval, would not, individually or in the aggregate, prevent or materially delay the performance by Stockholder of any of its obligations under this Agreement. No consent of, or registration, declaration or filing with, any Governmental Body is required to be obtained or made by or with respect to Stockholder in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby, other than (x) as required under the Securities Act, the Exchange Act, other similar securities laws and the rules and regulations promulgated thereunder and (y) as would not, individually or in the aggregate, prevent or materially delay the performance by Stockholder of any of its obligations under this Agreement.

7.3 Title to Shares. As of the date of this Agreement, Stockholder holds of record, free and clear of any Encumbrance, the number of outstanding Shares set forth under the heading “Shares Held of Record” on the signature page hereof.

7.4 Merger Agreement. Stockholder has reviewed and understands the terms of this Agreement and the Merger Agreement, and Stockholder has had the opportunity to consult with such Stockholder’s counsel in connection with this Agreement. Stockholder understands and acknowledges that Parent is entering into the Merger Agreement in reliance upon Stockholder’s execution and delivery of this Agreement.

SECTION 8. REPRESENTATIONS AND WARRANTIES OF PARENT AND PURCHASER

Each of Parent and Purchaser hereby, jointly and severally, represents and warrants to Stockholder as follows:

8.1 Authorization, etc. Each of Parent and Purchaser have all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized, executed and delivered by each of Parent and Purchaser and, assuming due authorization, execution and delivery by Stockholder, constitute legal, valid and binding obligations of Parent and Purchaser, enforceable against Parent and Purchaser in accordance with their terms, subject to (a) laws of general application relating to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other laws affecting enforcement of creditors’ rights generally and (b) rules of law governing specific performance, injunctive relief and other equitable remedies. Each of Parent and Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was organized.

8.2 No Conflicts or Consents. The execution and delivery of this Agreement by Parent and Purchaser do not, and the performance of this Agreement by Parent and Purchaser will not: (a) conflict with or violate any law, rule, regulation, order, decree or judgment applicable to Parent and Purchaser or by which Parent or Purchaser or any of its properties is or may be bound, except for any conflict or violation which would not adversely affect in any material respect the ability of Parent or Purchaser to perform its obligations hereunder or consummate the transactions contemplated hereby; or (b) require any filing with, nor any permit, authorization, consent or approval of, any Person or require any consent of, or registration, declaration or filing with, any Governmental Body, other than (i) any applicable requirements of the Exchange Act, The NASDAQ

Global Select Market, and the DGCL, (ii) as required by Antitrust Laws, (iii) contemplated by the Merger Agreement (including schedules thereto), and (iv) where the failure to obtain such consents or approvals or to make such filings, would not, individually or in the aggregate, prevent or materially delay the performance by Parent or Purchaser of any of their obligations under this Agreement.

SECTION 9. COVENANTS OF STOCKHOLDER

9.1 Stockholder Information. Stockholder hereby agrees to permit Parent and Purchaser to publish and disclose in the Offer Documents Stockholder's identity and ownership of the Subject Securities and the nature of Stockholder's commitments, arrangements and understandings under this Agreement.

9.2 Further Assurances. From time to time and without additional consideration, Stockholder shall (at Stockholder's sole expense) execute and deliver, or cause to be executed and delivered, such additional transfers, assignments, endorsements, proxies, consents and other instruments, and shall (at Stockholder's sole expense) take such further actions, as Parent may reasonably request for the purpose of carrying out and furthering the intent of this Agreement.

9.3 Stop Transfer Order; Legends. Stockholder hereby agrees that it will not request that the Company register the Transfer of any certificate or uncertificated interest representing any of the Subject Securities, unless such Transfer is made in compliance with this Agreement. In furtherance of this Agreement, concurrently herewith, Stockholder shall, and hereby does authorize the Company or its counsel to, notify the Company's transfer agent that there is a stop transfer order with respect to all of the Subject Securities (and that this Agreement places limits on the voting and transfer of such shares). The parties hereto agree that such stop transfer order shall be removed and shall be of no further force and effect upon the Termination Date.

SECTION 10. MISCELLANEOUS

10.1 Survival of Representations, Warranties and Agreements. All representations, warranties, covenants and agreements in this Agreement, and all rights and remedies with respect thereto, shall not survive the Termination Date.

10.2 Expenses. All costs and expenses incurred in connection with the transactions contemplated by this Agreement shall be paid by the party incurring such costs and expenses.

10.3 Notices. Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received (a) upon receipt when delivered by hand, (b) two (2) business days after being sent by registered mail or by courier or express delivery service, (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed, or (d) if sent by email transmission after 6:00 p.m. recipient's local time and receipt is confirmed, the business day following the date of transmission; provided that in each case the notice or other communication is sent to the physical address or email address set forth beneath the name of such party below (or to such other physical address or email address as such party shall have specified in a written notice given to the other parties hereto):

if to Stockholder:

at the address set forth on the signature page hereof;

and if to Parent or Purchaser:

Sientra, Inc.
420 S. Fairview, Suite 200
Santa Barbara CA 93117
Attn: Jeffrey M. Nugent
Chief Executive Officer
Email: jeff.nugent@sientra.com

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

Cooley LLP
Attn: C. Thomas Hopkins
1333 2nd Street, Suite 400
Santa Monica, CA 90401
Email: thopkins@cooley.com

and

Cooley LLP
Attn: Jamie Leigh
101 California Street, 5th Floor
San Francisco, CA 94111
Email: jleigh@cooley.com

10.4 Severability. In the event that any term or other provision of this Agreement, or the application thereof, is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Offer and the Merger be effected as originally contemplated to the fullest extent possible.

10.5 Entire Agreement; Amendment. This Agreement and any other documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

10.6 Assignment; Binding Effect. No party may assign (by merger, operation of law or otherwise) either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties; *provided*, that each of Parent or Purchaser may assign,

in its sole discretion, any or all of its rights, interests and obligations under this Agreement to any one or more direct or indirect wholly owned Subsidiaries of Parent without the consent of the Stockholder, but no such assignment shall relieve Parent or Purchaser, as applicable, of any of its obligations under this Agreement. Any purported assignment in violation of this Agreement will be void *ab initio*.

10.7 Independence of Obligations. The covenants and obligations of Stockholder set forth in this Agreement shall be construed as independent of any other agreement or arrangement between Stockholder, on the one hand, and the Company or Parent, on the other. The existence of any claim or cause of action by Stockholder against the Company or Parent shall not constitute a defense to the enforcement of any of such covenants or obligations against Stockholder.

10.8 Specific Performance. The parties hereto acknowledge that money damages would be an inadequate remedy for any breach of this Agreement by any party hereto, and that the obligations of the parties hereto shall be enforceable by any party hereto through injunctive or other equitable relief.

10.9 Governing Law. This Agreement, and any dispute arising out of, relating to or in connection with this Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any choice or conflict of Law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

10.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, portable document format (PDF) or other electronic transmission, including by e-mail attachment, shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Waiver. No failure on the part of Parent or Purchaser to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of Parent or Purchaser in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. Neither Parent nor Purchaser shall be deemed to have waived any claim available to Parent or Purchaser arising out of this Agreement, or any power, right, privilege or remedy of Parent or Purchaser under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of Parent or Purchaser; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

10.12 Termination. This Agreement and all rights and obligations of the parties hereunder shall terminate, and no party shall have any rights or obligations hereunder, and this Agreement shall become null and void on, and have no further effect as of the Termination Date. Nothing in

this Section 9.12 shall relieve any party from any liability for any willful, knowing and material breach of this Agreement occurring prior to the termination of this Agreement.

10.13 Directors and Officers. This Agreement applies to Stockholder solely in such Stockholder's capacity as a holder of Subject Securities, and not to Stockholder or any representative of Stockholder serving as a director or officer of the Company in such capacity.

10.14 Construction.

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

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

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

(d) Unless otherwise indicated or the context otherwise requires: (i) all references in this Agreement to "Sections" and "Exhibits" are intended to refer to Sections of this Agreement and Exhibits to this Agreement; and (ii) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement.

(e) The captions contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each of Parent, Purchaser and Stockholder has caused this Agreement to be executed as of the day and year first above written.

SIENTRA, INC.

By: _____
Name: _____
Title: _____

DESERT ACQUISITION CORPORATION

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, each of Parent, Purchaser and Stockholder has caused this Agreement to be executed as of the day and year first above written.

STOCKHOLDER

Signature

Printed Name

Address: _____

Facsimile: _____

Shares Held of Record

EXHIBIT A
FORM OF IRREVOCABLE PROXY

The undersigned stockholder (the “**Stockholder**”) of Miramar Labs, Inc., a Delaware corporation (the “**Company**”), hereby irrevocably (to the fullest extent permitted by law) appoints and constitutes Jeffrey Nugent, Charles Huiner and Sientra, Inc., a Delaware corporation (“**Parent**”), and each of them, the attorneys and proxies of the Stockholder, with full power of substitution and resubstitution, to the full extent of the Stockholder’s rights with respect to (i) the outstanding shares of capital stock of the Company owned of record by the Stockholder as of the date of this proxy, which shares are specified on the final page of this proxy, and (ii) any and all other shares of capital stock of the Company which the Stockholder may acquire on or after the date hereof (the shares of the capital stock of the Company referred to in clauses “(i)” and “(ii)” are collectively referred to herein as the “**Shares**”); *provided* that the number of Shares subject to this proxy shall be reduced, if applicable, pursuant to the terms of Section 5 of the Support Agreement (as defined below). Upon the execution hereof, all prior proxies given by the Stockholder with respect to any of the Shares are hereby revoked, and the Stockholder agrees that no subsequent proxies will be given with respect to any of the Shares.

This proxy is irrevocable, shall survive the Stockholder’s death, liquidation or termination, is coupled with an interest and is granted in connection with, and as security for, the Tender and Support Agreement, dated as of the date hereof, among Parent, Desert Acquisition Corporation, Delaware corporation and wholly owned subsidiary of Parent (“**Purchaser**”), and the Stockholder (the “**Support Agreement**”), and is granted in consideration of Parent entering into the Agreement and Plan of Merger, dated as of the date hereof, among Parent, Purchaser and the Company (the “**Merger Agreement**”). This proxy will terminate on the Termination Date (as defined in the Support Agreement). Capitalized terms not defined in this Proxy or in the Support Agreement shall have the respective meanings assigned to those terms in the Merger Agreement.

The attorneys and proxies named above will be empowered, and may exercise this proxy, to vote the Shares at any time until (and including) the Termination Date at any meeting of the stockholders of the Company, however called, and in connection with any action by written consent of stockholders of the Company:

(i) in favor of (A) the merger contemplated by the Merger Agreement (the “**Merger**”), the execution and delivery by the Company of the Merger Agreement and the adoption and approval of the Merger Agreement and the terms thereof, (B) each of the other actions contemplated by the Merger Agreement and (C) any action in furtherance of any of the foregoing;

(ii) against any action or agreement that, to Stockholder’s knowledge, would result in a breach of any representation, warranty, covenant or obligation of the Company in the Merger Agreement in a manner that would reasonably be expected to cause a failure of an Offer Condition to be satisfied; and

(iii) against the following actions (other than the Merger and the other transactions contemplated by the Merger Agreement): (A) any Acquisition Proposal; (B) any amendment

to the Company's certificate of incorporation or bylaws; or (C) any change in a majority of the board of directors of the Company; in the case of the foregoing clauses (B) and (C) other than to the extent such action would not reasonably be expected to prevent the consummation of the Merger or any of the other Transactions or the Support Agreement.

The Stockholder may vote the Shares on all other matters not referred to in this proxy (including any Shares initially subject to this proxy but thereafter released from the terms of this proxy in accordance with Section 5 of the Support Agreement), and the attorneys and proxies named above may not exercise this proxy with respect to such other matters.

This proxy shall be binding upon the heirs, estate, executors, personal representatives, successors and assigns of the Stockholder (including any transferee of any of the Shares).

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

Dated: _____, 2017

STOCKHOLDER

Signature

Printed Name

Number of Shares owned of record as of the date of this proxy:

[FORM OF]

CONTINGENT VALUE RIGHTS AGREEMENT

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [•], 2017 (this “*Agreement*”), is entered into by and between Sientra, Inc., a Delaware corporation (“*Parent*”) and [] as Rights Agent (the “*Rights Agent*”).

RECITALS

A. Parent, Desert Acquisition Corporation, a Delaware corporation (“*Purchaser*”), and Miramar Labs, Inc., a Delaware corporation (“*Company*”), have entered into an Agreement and Plan of Merger, dated as of June 11, 2017 (as amended from time to time, the “*Merger Agreement*”), pursuant to which Purchaser (a) will launch a tender offer (the “*Offer*”) to acquire all of the outstanding shares of common stock, par value \$0.001 per share, of Company (“*Company Common Stock*”), and (b) will merge with and into Company, with Company surviving the Merger as a subsidiary of Parent.

B. Pursuant to the Merger Agreement, Parent has agreed to provide to holders of Company Common Stock and other individuals the right to receive contingent cash payments as hereinafter described.

AGREEMENT

The parties to this Agreement, for and in consideration of the premises and the consummation of the transactions referred to above, intending to be legally bound, hereby mutually covenant and agree, for the equal and proportionate benefit of all Holders (as defined below), as follows:

SECTION 1

DEFINITIONS

1.1 Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. The following terms shall have the meanings ascribed to them below:

“*Assignee*” has the meaning set forth in Section 6.4.

“*Board of Directors*” means the board of directors of Parent.

“*Board Resolution*” means a copy of a resolution certified by a duly authorized officer of Parent to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Rights Agent.

“*Business Day*” means any day other than a Saturday, Sunday or a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to remain closed.

“**CVRs**” means the rights of Holders to receive contingent cash payments pursuant to the Merger Agreement and this Agreement.

“**Cover**” means, with respect to any subject matter, that the manufacture, use, sale, offering for sale, importation, exportation or other exploitation of such subject matter would infringe a claim of an issued or granted patent at the time thereof or a claim of a pending patent application as such patent application was published.

“**CVR Majority**” means Holders of not less than a majority of the outstanding CVRs.

“**CVR Register**” has the meaning set forth in Section 2.3(b).

“**CVR Shortfall**” has the meaning set forth in Section 4.3(b).

“**DTC**” means The Depository Trust Company.

“**Governmental Entity**” means any foreign or domestic arbitrator, court, nation, government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial regulatory or administrative functions of, or pertaining to, government.

“**Holder**” means a Person in whose name a CVR is registered in the CVR Register.

“**Independent Accountant**” has the meaning set forth in Section 4.3(a).

“**Milestone**” means each of Milestone #1 and Milestone #2.

“**Milestone #1**” means cumulative Net Sales of the Product worldwide following the Closing exceeding \$50,000,000.

“**Milestone #2**” means cumulative Net Sales of the Product worldwide following the Closing exceeding \$80,000,000 (which calculation, for the avoidance of doubt, shall be inclusive of any Net Sales counted in the determination of Milestone #1).

“**Milestone Compliance Certificate**” has the meaning set forth in Section 2.4(a).

“**Milestone Payment**” means, without any aggregation:

- (a) \$0.0147 per CVR, with respect to achieving Milestone #1; and
- (b) \$0.6911 per CVR, with respect to achieving Milestone #2.

“**Milestone Payment Date**” has the meaning set forth in Section 2.4(a).

“**Net Sales**” means the gross amount invoiced by or on behalf of the relevant Selling Entity for the Product sold to third parties other than any other Selling Entity, less the Permitted Deductions, all as determined in accordance with the Selling Entity’s usual and customary accounting methods consistent with the treatment of other products commercialized by the applicable Selling Entity, which shall be in accordance with United States generally accepted accounting principles, including the

accounting methods for translating activity denominated in foreign currencies into United States dollar amounts. In the case of any sale of the Product between or among Parent, its Affiliates, licensees and sublicensees, for resale, Net Sales will be calculated as above only on the value charged or invoiced on the first arm's-length sale thereafter to a third party. For the avoidance of doubt, in the case of any sale of the Product between or among Parent, its Affiliates, licensees and sublicensees where such Affiliate or licensee is an end-user of, and does not further sell, the Product, Net Sales will be calculated on the value charged or invoiced to such Affiliate, licensee or sublicensee. In the case of any sale for value other than exclusively for money (but excluding any patient assistance programs), Net Sales will be calculated on the fair market price of the Product in the jurisdiction of sale during the relevant period.

“Officer’s Certificate” means a certificate signed by an authorized officer of Parent, in his or her capacity as such an officer, and delivered to the Rights Agent.

“Patent” means any of the following anywhere in the world: (a) any issued patent, including inventor's certificates, substitutions, extensions, confirmations, reissues, re-examinations, renewals or any like governmental grant for protection of inventions; and (b) any pending application for any of the foregoing, including any continuation, divisional, substitution, continuations-in-part, provisional and converted provisional applications.

“Permitted Deductions” means the following deductions to the extent actually deducted by a Selling Entity from the gross invoiced sales price of the Product, or otherwise directly paid or incurred by the Selling Entity with respect to the applicable sale of the Product:

- (a) ordinary course trade and quantity discounts actually allowed;
- (b) amounts repaid or credited by reasons of defects, recalls, returns, rebates or allowances of goods or because of retroactive price reductions specifically identifiable to the Product;
- (c) chargebacks, rebates (or the equivalent thereof) and other amounts paid on sale of the Product, including such payments mandated by programs of Governmental Entities;
- (d) rebates (or the equivalent thereof) and administrative fees paid to medical healthcare organizations, to group purchasing organizations or to trade customers in line with approved contract terms or other normal and customary understandings and arrangements;
- (e) tariffs, duties, excise, sales, value-added and other taxes (other than taxes based on net income) and charges of Governmental Entities;
- (f) deductions for uncollectible amounts on previously sold products following commercially reasonable attempts to collect such amounts (which adjustment shall be based on actual bad debts incurred and written off as uncollectible by the Selling Entity in a quarter, net of any recoveries of amounts previously written off as uncollectible from current or prior quarters);
- (g) discounts pursuant to indigent patient programs and patient discount programs and coupon discounts;

(h) transportation, freight, postage, importation, shipping insurance and other handling expenses to the extent paid by a Selling Entity and not invoiced, paid or reimbursed by a third party purchaser; and

(i) required distribution commissions and fees (including fees related to services provided pursuant to distribution service agreements with wholesalers, fee-for-service wholesaler fees and inventory management fees) payable to any third party providing distribution services to the Selling Entities.

For the avoidance of doubt, if a single item falls into more than one of the categories set forth in clauses (a) through (i) above, such item may not be deducted more than once.

“Permitted Transfer” means: a transfer of CVRs (a) on death by will or intestacy; (b) transfer by instrument to an *inter vivos* or testamentary trust in which the CVRs are to be passed to beneficiaries upon the death of the trustee, (c) pursuant to a court order; (d) made by operation of law (including a consolidation or merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity; (e) in the case of CVRs payable to a nominee, from a nominee to a beneficial owner, to the extent allowable by DTC; or (f) as provided in Section 2.6.

“Product” means (a) the product named and marketed on the date hereof as the miraDRY System including the console, handpiece and bioTip, including any improvements, modifications, and derivatives thereof or thereto; (b) any other product or system that is Covered by a Valid Claim of a Patent included in Parent IP (as defined in the Merger Agreement); and (c) any and all related repair or replacement parts, accessories, software, and services.

“Review Request Period” has the meaning set forth in Section 4.3(a).

“Rights Agent” means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter **“Rights Agent”** shall mean such successor Rights Agent.

“Selling Entity” means Parent, any Assignee, and each of their controlled Affiliates (including, from and after the Effective Time, Parent), licensees and sublicensees.

“Shortfall Report” has the meaning set forth in Section 4.3(b).

“Valid Claim” means a claim of: (a) any issued or granted, unexpired patent that: (i) has not been revoked or held unenforceable or invalid by a court or other governmental agency of competent jurisdiction in a decision from which no appeal can be, or has been, taken; and (ii) has not been admitted to be invalid or unenforceable through reissue, reexamination, disclaimer or otherwise; and (b) any application for a patent that is pending with an administrative patent authority unless such application has been: (i) abandoned; or (ii) rejected by the relevant patent authority and all options for appeal to the relevant patent authority for further prosecution of such claim have been exhausted.

SECTION 2

CONTINGENT VALUE RIGHTS

2.1 CVRs. The CVRs represent the rights of Holders to receive contingent cash payments pursuant to this Agreement. The initial Holders will be determined pursuant to the terms of the Merger Agreement.

2.2 Nontransferable. The CVRs shall not be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, other than through a Permitted Transfer. Any attempted sale, assignment, transfer, pledge, encumbrance or disposition of CVRs, in whole or in part, in violation of this Section 2.2 shall be void *ab initio* and of no effect.

2.3 No Certificate; Registration; Registration of Transfer; Change of Address.

(a) The CVRs shall not be evidenced by a certificate or other instrument.

(b) The Rights Agent shall keep a register (the “*CVR Register*”) for the purpose of registering CVRs and transfers of CVRs as herein provided. The CVR Register will show one position for Cede & Co representing all the shares of Company Common Stock held by DTC on behalf of the street name holders of the shares of Company Common Stock tendered by such holders in the Offer or held by such holders as of immediately prior to the Effective Time. The Rights Agent will have no responsibility whatsoever directly to the street name holders with respect to transfers of CVRs unless and until such CVRs are transferred into the name of such street holders in accordance with Section 2.2 of this Agreement. With respect to any payments to be made under Section 2.4 below, the Rights Agent will accomplish the payment to any street holders of shares of Company Common Stock by sending one lump payment to DTC. The Rights Agent will have no responsibilities whatsoever with regard to distribution of payments by DTC to such street name holders.

(c) Subject to the restrictions on transferability set forth in Section 2.2, every request made to transfer a CVR must be in writing and accompanied by a written instrument of transfer in form reasonably satisfactory to the Rights Agent, duly executed by the Holder thereof, his, her or its attorney duly authorized in writing, personal representative or survivor and setting forth in reasonable detail the circumstances relating to the transfer. Upon receipt of such written notice, the Rights Agent shall, subject to its reasonable determination that the transfer instrument is in proper form and the transfer otherwise complies with the other terms and conditions herein (including the provisions of Section 2.2), register the transfer of the CVRs in the CVR Register. Parent and Rights Agent may require payment of a sum sufficient to cover any stamp or other tax or governmental charge that is imposed in connection with any such registration of transfer. The Rights Agent shall have no duty or obligation to take any action under any section of this Agreement that requires the payment by a Holder of a CVR of applicable taxes or charges unless and until the Rights Agent is satisfied that all such taxes or charges have been paid. All duly transferred CVRs registered in the CVR Register shall be the valid obligations of Parent, evidencing the same right, and shall entitle the transferee to the same benefits and rights under this Agreement, as those held by the transferor. No transfer of a CVR shall be valid until registered in the CVR Register, and any transfer not duly registered in the CVR Register will be void *ab initio*.

(d) A Holder may make a written request to the Rights Agent to change such Holder's address of record in the CVR Register. The written request must be duly executed by the Holder. Upon receipt of such written notice, the Rights Agent shall promptly record the change of address in the CVR Register.

2.4 Notice and Payment Procedures.

(a) Within forty-five (45) days following the end of each fiscal quarter, until the achievement of both Milestones, Parent shall deliver to the Rights Agent a report specifying in reasonable detail: (i) the gross invoiced amount from sales of Product by the Selling Entities; (ii) amounts deducted (setting forth for the amount of each specific category of Permitted Deductions to which such amounts qualify thereas) from the gross invoiced amount to calculate Net Sales; and (iii) quarterly and cumulative Net Sales (a "**Quarterly Milestone Report**"); *provided* that to the extent such information is specifically contained in any periodic report filed by Parent with the Securities and Exchange Commission with respect to any fiscal quarter prior to the date an applicable Quarterly Milestone Report was required to be delivered, no Quarterly Milestone Report will be required to be delivered under this Section 2.4(a) with respect to such Fiscal Quarter.

(b) If a Milestone is attained, then within forty-five (45) days following such attainment (the "**Milestone Payment Date**"), Parent shall deliver to the Rights Agent (i) a certificate (the "**Milestone Compliance Certificate**") certifying the satisfaction of the applicable Milestone and that the Holders are entitled to receive the applicable Milestone Payment, (ii) cash in the aggregate amount of the applicable Milestone Payment payable to the Holders, along with (iii) any letter of instruction required by the Rights Agent.

(c) The Rights Agent shall promptly, and in no event later than ten (10) Business Days after receipt, send each Holder at its registered address a copy of any Milestone Compliance Certificate delivered by Parent pursuant to Section 2.4(a), and at the time the Rights Agent sends a copy of such Milestone Compliance Certificate to the Holders, the Rights Agent shall also pay the Milestone Payment to each of the Holders (the amount to which each Holder is entitled to receive will be based on the Milestone Payment multiplied by the number of CVRs held by such Holder as reflected on the CVR Register).

(d) Parent and the Rights Agent shall be entitled to deduct and withhold, or cause to be deducted or withheld, from the any amounts otherwise payable pursuant to this Agreement, such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld and paid over to or deposited with the relevant Governmental Body, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Holder in respect of which such deduction and withholding was made. Prior to making any such tax withholdings or causing any such tax withholdings to be made with respect to any Holder, the Rights Agent shall, to the extent reasonably practicable, provide notice to the Holder of such potential withholding and a reasonable opportunity for the Holder to provide any necessary tax forms (including an IRS Form W-9 or an applicable IRS Form W-8) in order to avoid or reduce such withholding amounts.

(e) Any portion of the Milestone Payment that remains undistributed to the Holders for six months after the Milestone Payment Date shall be delivered by the Rights Agent to Parent, upon demand, and any Holder shall thereafter look only to Parent for payment of such Milestone Payment, but shall have no greater rights against Parent than may be accorded to general unsecured creditors of Parent under applicable law.

(f) Neither Parent nor the Rights Agent shall be liable to any person in respect of the Milestone Payment delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. If any portion of a Milestone Payment made by Parent remains unclaimed by a Holder prior to two years after the applicable Milestone Payment Date (or immediately prior to such earlier date on which the Milestone Payment would otherwise escheat to or become the property of any Governmental Entity), despite the Rights Agent's commercially reasonable efforts to deliver the payment to a Holder, any such Milestone Payment shall, to the extent permitted by applicable Legal Requirement, become the property of Parent, free and clear of all claims or interest of any person previously entitled thereto.

2.5 No Voting, Dividends or Interest; No Equity or Ownership Interest in Parent.

(a) The CVRs shall not have any voting or dividend rights, and interest shall not accrue on any amounts payable on the CVRs to any Holder, except as specifically provided herein.

(b) The CVRs shall not represent any equity or ownership interest in Parent or in any constituent company to the Merger.

2.6 Ability To Abandon The CVR. The Holder of a CVR may at any time at its option abandon all of its remaining rights in a CVR by transferring the CVR to Parent without consideration therefor. Nothing in this Section 2.6 is intended to prohibit Parent from offering to acquire CVRs for consideration in its sole discretion.

SECTION 3

THE RIGHTS AGENT

3.1 Certain Duties and Responsibilities. The Rights Agent shall not have any liability for any actions taken or not taken in connection with this Agreement, except to the extent of its willful misconduct, bad faith or gross negligence. No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

3.2 Certain Rights of Rights Agent. The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Rights Agent. In addition:

(a) the Rights Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever the Rights Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Rights Agent may, in the absence of bad faith, gross negligence or willful misconduct on its part, rely upon an Officer's Certificate;

(c) the Rights Agent may engage and consult with counsel of its selection and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reasonable reliance thereon;

(d) the permissive rights of the Rights Agent to do things enumerated in this Agreement shall not be construed as a duty;

(e) the Rights Agent shall not be required to give any note or surety in respect of the execution of such powers or otherwise in respect of the premises;

(f) Parent agrees to indemnify Rights Agent for, and hold Rights Agent harmless against, any loss, liability, claim, demands, suits or expense arising out of or in connection with Rights Agent's duties under this Agreement, including the costs and expenses of defending Rights Agent against any claims, charges, demands, suits or loss, unless such loss shall have been determined by a court of competent jurisdiction to be a result of Rights Agent's gross negligence, bad faith or willful misconduct; and

(g) Parent agrees (i) to pay the fees and expenses of the Rights Agent in connection with this Agreement, as agreed upon in writing by Rights Agent and Parent on or prior to the date hereof, and (ii) to reimburse the Rights Agent for all taxes and governmental charges, reasonable expenses and other charges of any kind and nature incurred by the Rights Agent in the execution of this Agreement (other than income, receipt, franchise or similar Taxes). The Rights Agent shall also be entitled to reimbursement from Parent for all reasonable and necessary out-of-pocket expenses paid or incurred by it in connection with the administration by the Rights Agent of its duties hereunder.

3.3 Appointment of Successor.

(a) The Rights Agent may resign at any time by giving written notice thereof to Parent and the Holders specifying a date when such resignation shall take effect, which notice shall be sent at least 60 days prior to the date so specified. A CVR Majority shall, with the prior written consent of Parent (such consent not to be unreasonably withheld), have the right to remove the Rights Agent at any time, specifying a date when such removal shall take effect. Notice of such removal shall be given to Parent and Rights Agent, which notice shall be sent at least 60 days prior to the date so specified.

(b) If the Rights Agent shall resign, be removed or become incapable of acting, Parent shall, with the prior written consent of a CVR Majority (such consent not to be unreasonably withheld), promptly appoint a qualified successor Rights Agent. The successor Rights Agent so appointed shall, forthwith upon its acceptance of such appointment in accordance with Section 3.4, become the successor Rights Agent.

(c) Parent shall give notice of each appointment of a successor Rights Agent by mailing written notice of such event by first-class mail, postage prepaid, to the Holders who did not appoint or approve of such successor as their names and addresses appear in the CVR Register. Each notice shall include the name and address of the successor Rights Agent. If Parent fails to send such notice within ten days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent shall cause the notice to be mailed at the expense of Parent.

(d) Notwithstanding anything to the contrary in this Section 3.3, Parent shall not appoint a successor Rights Agent unless consented to in writing by a CVR Majority (such consent not to be unreasonably withheld).

3.4 Acceptance of Appointment by Successor. Every successor Rights Agent appointed hereunder shall execute, acknowledge and deliver to Parent and to the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Rights Agent; but, on request of Parent or the successor Rights Agent, such retiring Rights Agent shall execute and deliver an instrument transferring to such successor Rights Agent all the rights, powers and trusts of the retiring Rights Agent.

3.5 Compensation and Reimbursement. Parent agrees:

(a) to pay to the Rights Agent from time to time reasonable compensation for all services rendered by it hereunder in such amount as Parent and the Rights Agent shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust); and

(b) except as otherwise expressly provided herein, to reimburse the Rights Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by the Rights Agent in accordance with any provision of this Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Rights Agent's gross negligence, bad faith or willful misconduct.

3.6 Enforcement.

(a) Parent agrees that in the case of any failure to pay all or any part of the Milestone Payments when due and payable, then upon demand of the Rights Agent, Parent shall pay to the Rights Agent for the benefit of the Holders the whole amount that then shall have become due and payable hereunder (plus interest on such Milestone Payment, as applicable, at the "prime rate" as published in the Wall Street Journal from time to time plus 2%, from when the Milestone Payment should have been made); and in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Rights Agent and each predecessor Rights Agent, their respective agents, attorneys and counsel, and any expenses and liabilities incurred, and all advances made, by the Rights Agent and each predecessor Rights Agent, except as a result of the Rights Agent's gross negligence, willful misconduct or bad faith.

(b) The Rights Agent may in its discretion proceed to and shall be entitled and empowered protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Rights Agent shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Agreement or in aid of the exercise of any power granted herein, or to enforce any other remedy, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Agreement or in aid of the exercise of any power granted in this Agreement or to enforce any other legal or equitable right vested in the Rights Agent by this Agreement or by law.

(c) In case the Rights Agent or any Holder shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Rights Agent or to such Holder, then and in every such case Parent and the Rights Agent and the Holders shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of Parent, the Rights Agent and the Holders shall continue as though no such proceedings had been taken.

(d) Notwithstanding any other provision in this Agreement, the right of any Holder to receive payment on or after the respective due dates with respect to any Milestone Payment, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

(e) A CVR Majority shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Rights Agent, or exercising any power conferred on the Rights Agent with respect by this Agreement; *provided* that such direction shall not be otherwise than in accordance with law and the provisions of this Agreement; and *provided further* that (subject to the provisions of this Section 3) the Rights Agent shall have the right to decline to follow any such direction if the Rights Agent, being advised by counsel, shall determine that the action or proceeding so directed may not lawfully be taken or if the Rights Agent in good faith by its board of directors, the executive committee, or a committee of directors or authorized officers of the Rights Agent shall determine that the action or proceedings so directed would involve the Rights Agent in personal liability or if the Rights Agent in good faith shall so determine that the actions or forbearances specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders not joining in the giving of said direction.

(f) Nothing in this Agreement shall impair the right of the Rights Agent in its discretion to take any action deemed proper by the Rights Agent and which is not inconsistent with such direction or directions by Holders.

SECTION 4
COVENANTS

4.1 List of Holders. Parent shall furnish or cause to be furnished to the Rights Agent in such form as Parent receives from the Company's transfer agent (or other agent performing similar services for the Company), the names and addresses of the Holders within 30 Business Days of the Effective Time.

4.2 Payment of Milestone Payments. Parent shall duly and promptly deposit with the Rights Agent for payment to each Holder the Milestone Payments, if any, in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement.

4.3 Audits.

(a) Upon the written request of a CVR Majority provided to Parent with reasonable notice (but in no event more than once per year), Parent shall provide an independent certified public accounting firm of nationally recognized standing jointly agreed upon by the written consent of a CVR Majority and Parent (failing agreement on which each shall designate an independent public accounting firm of its own selection, which firms shall in turn appoint an independent public accounting firm for such purpose) (the "***Independent Accountant***") with access during normal business hours to such of the records of Parent as may be reasonably necessary to verify Net Sales comprising the achievement of the applicable Milestone. The fees charged by such accounting firm shall be paid by Parent. The Independent Accountant shall disclose to such Holders any matters directly related to their findings and shall disclose whether it has determined that any statements set forth in a Quarterly Milestone Report or Milestone Compliance Certificate are incorrect. The Independent Accountant shall provide Parent with a copy of all disclosures made to such Holders. The initiation of a review by a CVR Majority as contemplated by this Section 4.3(a) shall not relieve Parent of its obligation to pay any Milestone Payment for which notice of achievement has been given.

(b) If the Independent Accountant concludes that any Milestone Payment should have been paid but was not paid when due, Parent shall pay to the Rights Agent or to each Holder of a CVR the amount of such Milestone Payment (to the extent not paid on a subsequent date), as applicable, plus interest on such Milestone Payment, as applicable, at the "prime rate" as published in the Wall Street Journal from time to time plus 2%, from when the Milestone Payment Date should have occurred (if Parent had given notice of achievement of such Milestone pursuant to the terms of this Agreement), as applicable, to the date of actual payment (such amount including interest being the "***CVR Shortfall***"). Parent shall pay the CVR Shortfall to the Holders of record as of a date that is three (3) Business Days prior to a payment date selected by Parent, which date must be within sixty (60) days of the date the Independent Accountant delivers to Parent the Independent Accountant's written report (the "***Shortfall Report***"). The decision of such Independent Accountant shall be final, conclusive and binding on Parent and the Holders, shall be nonappealable and shall not be subject to further review.

(c) Each person seeking to receive information from Parent in connection with a review or audit shall enter into, and shall cause its accounting firm to enter into, a reasonable and mutually satisfactory confidentiality agreement with Parent obligating such party to retain all such information disclosed to such party in confidence pursuant to such confidentiality agreement and not use such information for any purpose other than the completion of such review or audit.

(d) Parent shall not, and shall cause its Affiliates not to, enter into any Contract with any third party with respect to a Product unless such Contract contains provisions that would allow any Independent Accountant appointed pursuant to this Section 4.3 such access to the records of the other party to such license or distribution agreement as may be reasonably necessary to perform its duties pursuant to this Section 4.3.

4.4 Retention Plan. Parent acknowledges and agrees that pursuant to the terms of the Retention Plan any amounts paid to the Holder of a CVR upon the achievement of a Milestone shall be considered “Net Proceeds” under the terms of the Retention Plan, and as a result thereof each Participant is entitled, upon the achievement of a Milestone, to receive a portion of such “Net Proceeds” pursuant to the terms of the Retention Plan and the Participation Agreement entered into by such Participant, and Parent shall, or shall cause the Surviving Corporation to, pay such amounts to such Participants in accordance with the terms of the Retention Plan.

SECTION 5

AMENDMENTS

5.1 Amendments Without Consent of Holders.

(a) Without the consent of any Holders, the Rights Agent and Parent, when authorized by a Board Resolution, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another Person as a successor Rights Agent and the assumption by any successor of the covenants and obligations of the Rights Agent herein;

(ii) to add to the covenants of Parent such further covenants, restrictions, conditions or provisions as the Board of Directors and the Rights Agent shall consider to be for the protection of the Holders; provided that, in each case, such provisions shall not adversely affect the interests of the Holders;

(iii) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement; provided that, in each case, such provisions shall not adversely affect the interests of the Holders;

(iv) as may be necessary or appropriate to ensure that the CVRs are not subject to registration under the Securities Act or the Exchange Act; provided that, such provisions shall not materially adversely affect the interests of the Holders; or

(v) any other amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, unless such addition, elimination or change is adverse to the interests of the Holders.

(b) Promptly after the execution by Parent and the Rights Agent of any amendment pursuant to the provisions of this Section 5.1, Parent shall mail (or cause the Rights Agent to mail) a notice thereof by first class mail to the Holders at their addresses as they shall appear on the CVR Register, setting forth in general terms the substance of such amendment.

5.2 Amendments With Consent of Holders.

(a) Subject to Section 5.1 (which amendments pursuant to Section 5.1 may be made without the consent of the Holders), with the written consent of a CVR Majority, whether evidenced in writing or taken at a meeting of the Holders, Parent, when authorized by a Board Resolution, and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement; *provided, however*, that no such amendment shall, without the consent of any Holder affected thereby:

(i) modify in a manner adverse to such Holder (i) any provision contained herein with respect to the termination of this Agreement, (ii) the time, terms, conditions for the payment of or the amount of any Milestone Payment;

(ii) reduce the number of CVRs; or

(iii) modify any of the provisions of this Section 5.2, except to increase the percentage of Holders from whom consent is required or to provide that certain other provisions of this Agreement cannot be modified or waived without the consent of such Holder.

(b) Promptly after the execution by Parent and the Rights Agent of any amendment pursuant to the provisions of this Section 5.2, Parent shall mail (or cause the Rights Agent to mail) a notice thereof by first class mail to the Holders at their addresses as they shall appear on the CVR Register, setting forth in general terms the substance of such amendment.

5.3 Execution of Amendments. In executing any amendment permitted by this Section 5, the Rights Agent shall be entitled to receive, and shall be fully protected in reasonably relying upon, an opinion of counsel selected by Parent stating that the execution of such amendment is authorized or permitted by this Agreement. The Rights Agent may, but is not obligated to, enter into any such amendment that affects the Rights Agent's own rights, privileges, covenants or duties under this Agreement or otherwise.

5.4 Effect of Amendments. Upon the execution of any amendment under this Section 5, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and every Holder shall be bound thereby.

SECTION 6

MISCELLANEOUS PROVISIONS

6.1 Entire Agreement; Counterparts. This Agreement and the Merger Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

6.2 Notices. Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received (a) upon receipt when delivered by hand, (b) two (2) Business Days after being sent by registered mail or by courier or express delivery service, (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed, or (d) if sent by email transmission after 6:00 p.m. recipient's local time and receipt is confirmed, the Business Day following the date of transmission; provided that in each case the notice or other communication is sent to the physical address or email address set forth beneath the name of such party below (or to such other physical address or email address as such party shall have specified in a written notice given to the other party hereto):

if to Parent:

Sientra, Inc.
420 S. Fairview, Suite 200
Santa Barbara CA 93117
Attn: Jeffrey M. Nugent
Chief Executive Officer
Email: jeff.nugent@sientra.com

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

Cooley LLP
Attn: C. Thomas Hopkins
1333 2nd Street, Suite 400
Santa Monica, CA 90401
Email: thopkins@cooley.com

and

Cooley LLP
Attn: Jamie Leigh
101 California Street, 5th Floor
San Francisco, CA 94111
Email: jleigh@cooley.com

if to the Rights Agent:

Facsimile No.

Email:

6.3 Notice To Holders. Where this Agreement provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his, her or its address as it appears in the CVR Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders.

6.4 Successors and Assigns. All covenants, provisions and agreements in this Agreement by or for the benefit of Parent, the Rights Agent or the Holders shall bind and inure to the benefit of their respective successors, assigns, heirs and personal representatives, whether so expressed or not. Parent may assign this Agreement without the prior written consent of the other parties to this Agreement to one or more of its direct or indirect Subsidiaries, *provided, however*, that in the event of any such assignment Parent shall remain subject to its obligations and covenants hereunder, including, but not limited to, its obligations under Section 4.2 and Section 4.5.

6.5 Benefits of Agreement. Nothing in this Agreement, express or implied, shall give to any Person (other than the parties hereto, the Holders and their permitted successors and assigns hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto, the Holders and their permitted successors and assigns.

6.6 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

6.7 Legal Holidays. In the event that a Milestone Payment Date shall not be a Business Day, then, notwithstanding any provision of this Agreement to the contrary, any payment required to be made in respect of the CVRs on such date need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the applicable Milestone Payment Date.

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

6.9 Termination. This Agreement shall be terminated and of no force or effect, the parties hereto shall have no liability hereunder, and no payments shall be required to be made, upon the payment of all Milestone Payments required to be paid under the terms of this Agreement. The termination of this Agreement shall not affect or limit the right (i) to receive Milestone Payments under Section 2.4 to the extent earned prior to termination of this Agreement, or (ii) inspect or receive payment set forth in Section 4.3, and such provisions shall survive the expiration or termination of this Agreement.

6.10 Construction.

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

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

(c) The bold-faced headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

6.11 No Obligation. Notwithstanding anything in this Agreement to the contrary, Parent shall have sole discretion with regard to all matters relating to the sales of the Product, including marketing the Product, provided, however, that Parent shall not, directly or indirectly, take any actions intentionally or knowingly to avoid making any of the Milestone Payments hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

SIENTRA, INC.

By: _____
Name: _____
Title: _____

[Rights Agent]

By: _____
Name: _____
Title: _____

**OMNIBUS AMENDMENT TO SUBORDINATED
SECURED CONVERTIBLE PROMISSORY NOTES**

This OMNIBUS AMENDMENT TO SUBORDINATED SECURED CONVERTIBLE PROMISSORY NOTES (this “**Amendment**”), is entered into this 11th day of June, 2017, by and among Miramar Labs, Inc., a Delaware corporation (the “**Company**”), Sientra, Inc. (“**Parent**”) and the Investors party hereto. Capitalized terms used but not defined herein shall have the respective meanings given to them in the Note Purchase Agreement (as defined below).

PRELIMINARY STATEMENT

The Company and the Investors party thereto are party to that certain Note Purchase Agreement, dated as of January 27, 2017 (the “**Note Purchase Agreement**”), pursuant to which the Company issued subordinated secured convertible promissory notes to the Investors at the Initial Closing (the “**Notes**”).

The Company and the Investors have agreed to amend certain provisions of the Note Purchase Agreement and the Notes, in accordance with the terms, and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Amendments to Notes. Subject to the terms of Section 11, each of the Notes is hereby amended and restated in its entirety in the form attached hereto as Annex I.

2. Payoff Amounts.

(a) Notwithstanding anything in the Note Purchase Agreement, any Note or any other Transaction Document to the contrary, (a) the Requisite Majority hereby agree that the Obligations to be repaid in connection with the occurrence of the Merger (as defined in that certain Agreement and Plan of Merger, dated as of June 11, 2017, by and among the Company, Parent and a wholly owned subsidiary of Parent (as amended, modified or restated from time to time in accordance with its terms, the “**Merger Agreement**”) are as set forth hereto as Annex II, and (b) promptly upon (but in no event later than one (1) business day after) the occurrence of the Merger, Parent shall pay or cause to be paid to each Investor its portion of the Obligations in such amounts as set forth on Annex II (such payments, the “**Closing Payments**”). Upon receipt of such amounts, (i) all outstanding Notes issued and purchased under the Note Purchase Agreement shall be deemed paid in full and shall be cancelled and of no further effect, (ii) the Note Purchase Agreement shall be terminated and the Company’s obligations thereunder and under the Notes shall be deemed satisfied and discharged, (iii) the security interest in favor of the Investors securing the Obligations shall terminate, (iv) the Company or their designee shall be authorized to file any UCC termination statements necessary to effect such termination and (v) the Investors will execute and deliver to Company any additional documents or instruments as Company shall reasonably request to evidence such termination.

(b) Upon the closing of the Merger, Parent shall reserve an amount equal to \$1,000,000 (the “**Closing Holdback Amount**”), which Closing Holdback Amount shall be held by Parent as a source of recovery in respect of the indemnification obligations of the Investors, and which Closing Holdback Amount (or a portion thereof) shall be payable to the Investors, each in accordance with the terms of Section 4.

3. Contingent Amendment Fee.

(a) Parent hereby agrees to pay to the Investors, in accordance with each respective Investor's Pro Rata Portion (as defined below), an aggregate amendment fee equal to \$4,115,566.06 (the "**Contingent Amendment Fee**"), subject to and contingent upon the occurrence of the Merger and the achievement of Milestone #1 (as defined in that certain Contingent Value Rights Agreement, intended to be entered into by and between Parent and the rights agent party thereto immediately prior to the consummation of the Merger, the form of which is attached as an exhibit to the Merger Agreement) (the "**CVR Agreement**"). The Contingent Amendment Fee shall be due and payable on the Milestone Payment Date of Milestone #1 (as such term is defined in the CVR Agreement).

(b) Parent further agrees that upon the achievement of Milestone #1, Parent shall reserve an amount equal to \$500,000 (the "**Milestone Holdback Amount**"), and together with the Closing Holdback Amount, the "**Holdback Amounts**"), which:

(i) in the event no Claim is delivered prior to the Closing Holdback Release Date in accordance with (and as each such term is defined in) Section 4, shall be due and payable to the Investors in full (in accordance with their Pro Rata Portions); and

(ii) in the event any Claim is so timely delivered, such Milestone Holdback Amount shall be available to Parent and the Company as a source of recovery in respect of the indemnification obligations of the Investors (to the extent such recovery is not fully satisfied from the Closing Holdback Amount) and/or all or a portion thereof shall be payable to the Investors, each in accordance with the terms of Section 4;

in each case, for the avoidance of doubt, with such Milestone Holdback Amount not becoming due and payable to the Investors until the later of (A) the achievement of Milestone #1 and (B) the Closing Holdback Release Date.

4. Indemnification.

(a) Subject to the terms of this Section 4 and Section 11, the Holdback Amounts shall be available to indemnify, defend and hold harmless Parent, the Company and their officers, directors, agents and employees, and each Person (as defined in the Merger Agreement), if any, who controls or may control Parent within the meaning of the Securities Act of 1933, as amended (each of the foregoing being referred to individually as an "**Indemnified Person**" and collectively as "**Indemnified Persons**") from and against a portion (such portion determined in accordance with Section 4(b)) of the losses, liabilities, claims, damages, fees, costs and expenses, including costs of investigation, costs of defense and settlement and reasonable fees and expenses of lawyers, experts and other professionals (collectively, "**Damages**") directly or indirectly arising out of or resulting from any Legal Proceeding (as defined in the Merger Agreement) brought by an equity holder or creditor of the Company in its capacity as such to the extent related to the negotiation, execution, consummation (or approval of the foregoing by the Company's Board of Directors) of the Offer, the Merger, the Merger Agreement and the Transactions (as defined in the Merger Agreement), including, for the avoidance of doubt, (i) any indemnification of, or expenses advanced or reimbursed to, a director or officer of the Company in connection with any such Legal Proceeding and (ii) any appraisal actions under Section 262 of the Delaware General Corporation Law, as amended, by any holders of Company Common Stock (as defined in the Merger Agreement) (provided, for the avoidance of doubt, that Indemnifiable Damages shall not include any payment of the Offer Price made in respect of any Dissenting Shares (as defined in the Merger Agreement)) (any such Damages which are ultimately determined to be indemnifiable hereunder, "**Indemnifiable Damages**").

(b) Parent acknowledges and agrees that contemporaneous with the execution of this

Amendment, Parent and the Company are entering in a certain Amendment No. 1 to the Assignment and License Agreement (the “**Foundry Agreement**”) with certain assignees of The Foundry, Inc. (the “**Assignees**”) pursuant to which Parent has agreed to pay to the Assignees an amount equal to \$1,500,000 (the “**Foundry Holdback Amount**”, and together with the Closing Holdback Amount and the Milestone Holdback Amount, the “**Total Holdback Amount**”), such amount to be paid subject to substantially the same terms as the payment of the Milestone Holdback Amount, and which Foundry Holdback Amount shall be subject to substantially the same indemnification terms as those set forth in this Section 4. It is the intent of the Parent and the Investors that the Assignees (collectively) and the Investors (collectively) shall each be responsible for, and the Foundry Holdback Amount and the Holdback Amounts (collectively) shall each be severally and not jointly available to indemnify and hold harmless the Indemnified Persons against, fifty percent (50%) of any Indemnifiable Damages. Notwithstanding the foregoing, the Investors agree that to the extent at any point any Indemnifiable Damages are recoverable hereunder, and at such time Milestone #1 has not been achieved, then 100% of such Indemnifiable Damages may be recovered from the Closing Holdback Amount, to the extent available. To the extent at any point thereafter Milestone #1 is achieved, and the Closing Holdback Amount was not sufficient to fully satisfy all Indemnifiable Damages indemnifiable under this Agreement and the Foundry Agreement, the Indemnified Persons shall be entitled to recover such shortfall (i) first from the Foundry Holdback Amount, until the amount of such recovery equals \$1,000,000 and (ii) second, fifty percent (50%) from the Foundry Holdback Amount and fifty percent (50%) from the Milestone Holdback Amount. In addition, to the extent, after the application of the foregoing provisions, the Investors have indemnified Parent for more than 50% of Indemnifiable Damages under this Amendment and the Foundry Agreement (in the aggregate), and Milestone #1 has been achieved, then the Assignees, or Parent on behalf of the Assignees, shall, in accordance with their Pro Rata Portions (as defined in the Foundry Agreement), remit an amount from the Foundry Holdback Amount otherwise payable to the Assignees under the Foundry Agreement to the Investors (in accordance with their Pro Rata Portions) such that each of the Investors (in the aggregate) and the Assignees (in the aggregate) shall have received 50% of the aggregate amount of the Total Holdback Amount payable to all such parties.

(c) In no event shall any Investor have any direct liability to any Indemnified Person with respect to any Indemnifiable Damages, nor, other than in respect of the Holdback Amounts pursuant to the terms of this Section 4, shall Parent, the Company or any other Indemnified Person be entitled to set off against any amounts otherwise payable to any Investors under this Agreement or otherwise, including the Closing Payments or the Contingent Amendment Fee (to the extent otherwise payable).

(d) In order for any Indemnified Person to seek indemnification pursuant to this Section 4, Parent (on behalf of such any such Indemnified Person) shall, prior to the one (1) year anniversary of the consummation of the Merger (the “**Closing Holdback Release Date**”), provide the Investor Representative a notice in writing (a “**Claim Notice**”) describing in reasonable detail the facts giving rise to any claim for indemnification hereunder (a “**Claim**”) and specifying in reasonable detail the amount of Damages paid, incurred, suffered or sustained in connection therewith, or the basis for any Damages anticipated to be so paid, incurred, suffered or sustain in connection therewith, which the Indemnified Persons reasonably believe constitute Indemnifiable Damages (such aggregate amount of Indemnifiable Damages described in all validly delivered Claim Notices, the “**Claimed Damages**”). After the giving of any Claim Notice pursuant hereto, the amount of the Claimed Damages to which an Indemnified Person is entitled under this Section 4 will be determined: (A) by the written agreement between the Indemnified Person and the Investor Representative; (B) by a final judgment or decree of any court of competent jurisdiction; or (C) by any other means to which the Indemnified Person and the Investor Representative shall agree. The judgment or decree of a court of competent jurisdiction will be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined.

(e) As soon as practicable, but in no event more than ten (10) days following the Closing Holdback Release Date, the Company shall pay to each Investor its Pro Rata Portion of (i) the Closing Holdback Amount *less* (ii) the aggregate amount of all Claimed Damages which as of such time had been finally determined to be Indemnifiable Damages hereunder *less* (iii) the aggregate amount of all Claimed Damages which as of such time remain subject to a final determination as to whether or not such Claimed Damages constitute Indemnifiable Damages (the amount described in this subsection (iii), the “**Retained Closing Holdback Amount**”). Following such time, to the extent any such pending Claim is finally resolved, as soon as practicable, but in no event more than ten (10) days, thereafter, the Company shall pay to each Investor its Pro Rata Portion of that portion of the Retained Closing Holdback Amount retained in respect of such Claim which was not finally determined to constitute Indemnifiable Damages recoverable from the Closing Holdback Amount (taking into account the terms of Section 4(b)).

(f) Contemporaneously with the payment of the Contingent Amendment Fee, if payable, the Company shall pay to each Investor its Pro Rata Portion of (i) the Milestone Holdback Amount *less* (ii) all Claimed Damages which as of such time had been finally determined to be Indemnifiable Damages hereunder and which were not fully recovered from the Closing Holdback Amount or the Retained Closing Holdback Amount (taking into account the terms of Section 4(b)) *less* (iii) all Claimed Damages which as of such time remain subject to a final determination as to whether or not such Claimed Damages constitute Indemnifiable Damages and which would not be fully recoverable from that portion of the Retained Closing Holdback Amount then still retained (taking into account the terms of Section 4(b)) (the amount described in this subsection (iii), the “**Retained Milestone Holdback Amount**”). Following such time, to the extent any such pending Claim is finally resolved, as soon as practicable, but in no event more than ten (10) days, thereafter, the Company shall pay to each Investor its Pro Rata Portion of that portion of the Retained Milestone Holdback Amount retained in respect of such Claim which was not finally determined to constitute Indemnifiable Damages recoverable from the Milestone Holdback Amount (taking into account the terms of Section 4(b)).

(g) “**Pro Rata Portion**” means, with respect to each Investor, the portion determined by dividing (A) the Closing Payment owed to such Investor as set forth on Annex II, by (B) the aggregate Closing Payments owed to all Investors as set forth on Annex II.

(h) Investor Representative

(i) By virtue of the execution and delivery of this Agreement, each Investor shall be deemed to have agreed to appoint Stacy Seltzer on behalf of Aisling Capital LLC as its agent and attorney-in-fact, as the Investor Representative for and on behalf of the Investors to give and receive notices and communications in respect of Claims under this Agreement, to authorize payment to any Indemnified Person from the Holdback Amounts in satisfaction of any Claims, to object to such payments and to agree to, negotiate, enter into settlements and compromises of and comply with orders of courts with respect to any such Claims, in each case relating to this Agreement, and to take all other actions that are necessary or appropriate in the judgment of the Investor Representative for the accomplishment of the foregoing. Such agency may be changed by the Investors, or the Investor Representative may resign from such agency, from time to time upon not less than thirty (30) days prior written notice to the Company; *provided, however*, that the Investor Representative may not be removed or a replacement designated unless Investors holding a majority of the Pro Rata Portion agree to such removal, if applicable, and to the identity of the substituted agent.

(ii) A decision, act, consent or instruction of the Investor Representative within the scope of this Section 4 shall constitute a decision of the Investors and shall be final, binding and conclusive

upon the Investors and the Company may rely upon any such decision, act, consent or instruction of the Investor Representative as being the decision, act, consent or instruction of the Investors.

(iii) The Investor Representative shall not be liable for any act done or omitted hereunder as Investor Representative while acting in good faith. The Investors shall indemnify the Investor Representative and hold the Investor Representative harmless against any and all Damages arising out of or in connection with the acceptance or administration of the Investor Representative's duties hereunder; *provided*, that in the event that any such Damages are finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Investor Representative, the Investor Representative will reimburse the Investors the amount of such indemnified Damages to the extent attributable to such gross negligence or willful misconduct.

(iv) Parent and the Company hereby covenant and agree to provide the Investor Representative with reasonable access, during normal business hours, to all applicable books, records and employees, and other applicable information in the custody or control of Parent or the Company in connection with or related to any Claim, the discharge of the Investor Representative's duties hereunder and the administration and resolution of any such Claim; *provided* that neither Parent nor the Company shall not be obligated to provide information or access to information to the extent that such provision or access would result in the loss of attorney-client privilege.

(v) The Investor Representative shall not be liable for any act done or omitted hereunder as Investor Representative while acting in good faith. The Investors shall indemnify the Investor Representative and hold the Investor Representative harmless against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses arising out of or in connection with the acceptance or administration of the Investor Representative's duties hereunder, including the fees and expenses of any legal counsel or experts retained by the Investor Representative ("***Investor Representative Expenses***") in each case as such Investor Representative Expense is suffered or incurred; *provided*, that in the event that any such Investor Representative Expense is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Investor Representative, the Investor Representative will reimburse the Investors the amount of such indemnified Investor Representative Expense to the extent attributable to such gross negligence or willful misconduct. If not paid directly to the Investor Representative by the Investors, any such Investor Representative Expenses may be recovered by the Investor Representative from Holdback Amounts.

5. Covenants, Representations and Warranties of the Investors. Each Investor hereby covenants, represents and warrants as follows:

(a) Such Investor has full legal capacity, power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Assuming the valid execution and delivery of this Agreement by the Company and the other Investors, this Amendment is a valid and binding obligation of such Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) Such Investor is, and at all times prior to the occurrence of the Merger shall continue to be, the sole legal and beneficial owner of the Notes set forth opposite its name on Annex I hereto and has and will have good and valid title to its Notes, free and clear of any Liens. Such Investor has not and will not, in whole or in part (a) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of its Notes or its rights in its Notes (other than to the Company pursuant hereto), or (b) given any person

or entity any transfer order, power of attorney or other authority of any nature whatsoever with respect to its Notes.

(c) Such Investor shall not solicit, assist, encourage, cooperate with or entice any individual or third party in the bringing of any Legal Proceeding related to the negotiation, execution, consummation (or approval of the foregoing by the Company's Board of Directors) or the Offer, the Merger, the Merger Agreement and the Transactions. Terms used but not defined in this subsection (c) shall have the respective meanings given to them in the Merger Agreement.

(d) If requested by the Company three (3) days prior to the payment by an Investor of its Closing Payment, such Investor shall deliver to the Company duly completed IRS Forms W-9 or W-8, as applicable, with regards to it and any of its affiliates as the Company may reasonably request.

6. Covenants, Representations and Warranties of Parent and the Company. The Company hereby covenants, represents and warrants as follows:

(a) Parent and the Company (i) are each a corporation duly organized, validly existing and in good standing under, and by virtue of, the laws of the State of Delaware; (ii) each have the power and authority to own, lease and operate its properties and carry on its business as now conducted; and (iii) are each duly qualified, licensed to do business and in good standing as a foreign corporation in the State of California and in each jurisdiction where the failure to be so qualified or licensed could reasonably be expected to have a material adverse effect.

(b) The execution, delivery and performance by Parent and the Company of the Transaction Documents to be executed by Parent or the Company and the consummation of the transactions contemplated thereby (i) are within the power of the Company and Parent, as applicable and (ii) have been duly authorized by all necessary actions on the part of Parent, the Company and their directors and the stockholders.

(c) Each of the Transaction Documents executed, or to be executed, by Parent or the Company has been, or will be, duly executed and delivered by Parent or the Company, as applicable, and constitutes, or will constitute, a legal, valid and binding obligation of Parent or the Company, as applicable, enforceable against Parent or the Company, as applicable, in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(d) The execution and delivery by Parent and the Company of the Transaction Documents executed by Parent or the Company, as applicable, and the performance and consummation of the transactions contemplated thereby do not and will not (i) violate Parent's Certificate of Incorporation or the Company's Amended and Restated Certificate of Incorporation or Bylaws ("**Charter Documents**") or any material judgment, order, writ, decree, statute, rule or regulation applicable to Parent or the Company; (ii) violate any provision of, or result in the breach or the acceleration of, or entitle any other Person to accelerate (whether after the giving of notice or lapse of time or both), any material mortgage, indenture, agreement, instrument or contract to which Parent or the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any Lien upon any property, asset or revenue of Parent or the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization or approval applicable to Parent or the Company, their businesses or operations, or any of their assets or properties.

(e) No consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or other Person (including, without limitation, the stockholders of any Person)

is required in connection with the execution and delivery of the Transaction Documents executed by Parent or the Company and the performance and consummation of the transactions contemplated thereby.

(f) Parent hereby covenants and agrees to be bound by the terms of Section 6.11 of the CVR Agreement as though such obligations were set forth in this Amendment, *mutatis mutandis*. In addition, to the extent Parent provides any notice to the Rights Agent (as defined in the CVR Agreement) pursuant to Sections 2.4, Section 4.3 or otherwise, it shall simultaneously deliver a true and complete copy of such notice to the Investor Representative.

7. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile copies of signed signature pages will be deemed binding originals.

8. Notes Document. This Agreement shall be a “Transaction Document” for all purposes of the Note Purchase Agreement and the other Transaction Documents. Nothing in this Amendment shall be deemed to be a novation of any obligations under the Notes or any other Transaction Document. Subject to Section 11, upon effectiveness hereof, each reference in the Notes to “this Note”, “hereunder”, “hereof”, “herein”, or words of like import, and each reference to any other Transaction Document shall be deemed a reference to the Transaction Documents as amended hereby.

9. Reaffirmation.

(a) The Company hereby agrees that the Obligations under and as defined in the Note, as amended hereby, are Obligations under and as defined in the Security Agreement (as amended on the date hereof) secured by the Collateral (as such term is defined in the Security Agreement) and (ii) the Company hereby reaffirms its Obligations under the Notes, the Note Purchase Agreement and each other Transaction Document.

(b) The Company further agrees that each of the Transaction Documents to which it is a party remains in full force and effect on the date hereof after giving effect to this Amendment.

(c) Except as set forth herein, each of the Transaction Documents to which the Company is a party shall remain unmodified and in full force and effect.

10. Entire Agreement. This Amendment together with the other Transaction Documents constitute and contain the entire agreement among the Company and Investors and supersede any and all prior agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral, respecting the subject matter hereof.

11. Effectiveness; Termination. This Amendment shall be deemed effective upon the due execution and delivery of this Amendment by the Company and the Requisite Majority; *provided* that, upon the termination of the Merger Agreement pursuant to Section 8.1 thereof, or the mutual written agreement of the Parent, the Company and a Requisite Majority prior to the closing of the Merger, this Agreement shall automatically terminate and be of no further force or effect, and the agreements set forth in this Amendment shall be deemed ineffective, retroactive to the date hereof, and the Notes shall be deemed to be remain in their original form without giving effect to any of the amendments set forth in Annex I.

12. Amendment. Any provision of this Agreement may be amended, waived or modified only upon the written consent of the Parent, the Company and the Requisite Majority; *provided, however*, that any amendment, waiver or consent which may have a material adverse effect on an Investor in a manner

different from the effect of such amendment, waiver or consent on one or more other Investors shall require the prior written consent of the affected Investor.

13. Governing Law. The provisions of Sections 6.01(b) of the Note Purchase Agreement are incorporated to this Agreement by reference and shall apply as if fully set forth herein *mutatis mutandis*.

[Remainder of page intentionally left blank]

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

MIRAMAR LABS, INC.

By: /s/ R. Michael Kleine
Name: R. Michael Kleine
Title: Chief Executive Officer

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

SIENTRA, INC.

By: /s/ Charles Huiner

Name: Charles Huiner

Title: Chief Operating Officer

The parties have caused this Amendment to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above:

INVESTOR:

CROSS CREEK CAPITAL, L.P.

By: Cross Creek Capital GP, L.P.

Its: Sole General Partner

By: Cross Creek Capital, LLC

Its: Sole General Partner

By: /s/ Tyler Christenson

Name: Tyler Christenson

Title: Director

INVESTOR:

**CROSS CREEK CAPITAL EMPLOYEES' FUND,
L.P.**

By: Cross Creek Capital GP, L.P.

Its: Sole General Partner

By: Cross Creek Capital, LLC

Its: Sole General Partner

By: /s/ Tyler Christenson

Name: Tyler Christenson

Title: Director

The parties have caused this Amendment to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above:

INVESTOR:

DOMAIN PARTNERS VII, L.P.

By: One Palmer Square Associates VII, L.L.C.

Its: General Partner

By: /s/ Lisa A. Kraeutler

Name: Lisa A. Kraeutler

Title: Attorney-in-Fact

The parties have caused this Amendment to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above:

INVESTOR:

MORGENTHALER PARTNERS VIII, L.P.

By: Morgenthaler Management Partners VIII, LLC
Its: Managing Partner

By: /s/ Henry A. Plain, Jr.

Name: Henry A. Plain, Jr.

Title: Member

[See Attached]

Payoff Amounts

Investor	Prepayment Amount
Aisling Capital III, L.P.	\$753,212
Domain Partners VII, L.P.	\$1,065,437
Morgenthaler Partners VIII, L.P.	\$764,258
Cross Creek Capital, L.P.	\$90,987
Cross Creek Capital Employees' Fund, L.P.	\$8,941
Clayton Struve	\$26,055
Peter Backus	\$78,082
Robert Bennett Prag	\$20,811
Total	\$2,807,783

**AMENDMENT NO. 1 TO ASSIGNMENT AND LICENSE AGREEMENT AND
ASSIGNMENT AGREEMENT**

This Amendment No. 1 to the Assignment and License Agreement and Assignment Agreement (this “**Amendment**”) is made as of June 11, 2017 (the “**Amendment Effective Date**”), by and between Miramar Labs, Inc. (f/k/a Foundry Newco X, Inc.), a Delaware corporation (“**Company**” or “**Miramar**”), Sientra, Inc., a Delaware corporation (“**Parent**”), The Foundry, LLC, a Delaware limited liability company (“**The Foundry**”), and the individuals listed on Annex A (“**Assignees**”).

BACKGROUND

WHEREAS, Company and The Foundry, Inc., a Delaware corporation (“**The Foundry Inc.**”) entered into that certain Assignment and License Agreement effective as of December 31, 2008, as amended and/or clarified by certain letter agreements dated June 10 and 11, 2010 (collectively, the “**License Agreement**”), pursuant to which The Foundry Inc. assigned to Company certain Assigned Patents, Assigned Technology, and Related Documentation (each as defined therein);

WHEREAS, as of the date hereof and prior to the effectiveness of this Amendment, the Company has, with respect to the Company’s Contingent Net Sales of Covered Products (each as defined in the License Agreement), incurred an obligation to pay to The Foundry approximately \$2,235,821.53, which obligation shall be satisfied in full by the payment of the Contingent Accrued Payment and the Foundry Holdback Amount, each pursuant to the terms of this Amendment;

WHEREAS, in connection with a liquidation and dissolution of The Foundry Inc.’s business, The Foundry Inc. and The Foundry entered into that certain Revised and Restated Assignment Agreement date December 31, 2008 (the “**Assignment Agreement**”), pursuant to which The Foundry Inc. assigned all of its rights and obligations under the License Agreement to The Foundry, and The Foundry agreed to pay Contingent Payments and Early Payments (each as defined in the License Agreement) to the Assignees, with each Assignee being entitled to a pro rata portion of such amounts (such pro rata portions, as set forth on Annex A across from each such Assignee’s name, the “**Pro Rata Portions**”);

WHEREAS, contemporaneously with the execution of this Amendment, Company, Parent and a wholly owned subsidiary of Parent (“**Purchaser**”) are entering into an Agreement and Plan of Merger (the “**Merger Agreement**”) pursuant to which Purchaser (a) will launch a tender offer to acquire all of the outstanding shares of common stock of Company, and (b) will merge with and into Company, with Company surviving the merger as a subsidiary of Purchaser;

WHEREAS, in connection with the Merger Agreement, Company and Purchaser further anticipate entering into a Contingent Value Rights Agreement (“**CVR Agreement**”) pursuant to which Purchaser will agree to provide to holders of Company Common Stock the right to receive contingent cash payments;

WHEREAS, the parties now desire to amend the License Agreement and the Assignment Agreement, all on the terms and conditions set forth below; and

WHEREAS, contemporaneously with the execution of this Amendment, Parent and the Company are entering in an Omnibus Amendment to Subordinated Secured Convertible Promissory Notes (the “**Note Amendment**”) with the Investors (as defined therein) in order to amend that certain Note Purchase Agreement dated as of January 27, 2017.

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings given to them in the License Agreement, Assignment Agreement, Merger Agreement, CVR Agreement or Note Amendment, as applicable.

2. Section 3.4 of the License Agreement is hereby deleted in its entirety and replaced with the following new Section 3.4 (which replacement shall be deemed an amendment to the Assignment Agreement to the extent any rights under such Assignment Agreement relate to Section 3.4 of the License Agreement):

3.4 **Contingent Payments.** In satisfaction of its obligation under Section 3.1 hereinabove, the Company agrees to pay The Foundry the following contingent payments:

(a) **Accrued Payments.** With respect to the Company’s Contingent Net Sales of Covered Products prior to the Amendment Effective Date, the Company hereby agrees to pay The Foundry an aggregate fee equal to Seven Hundred Thirty Five Thousand Eight Hundred Twenty One Dollars and Fifty Three Cents (\$735,821.53) (the “**Contingent Accrued Payment**”) in accordance with the provisions of Section 3.8(a)(i) (as provided below), subject to and contingent upon the occurrence of the Merger (as defined in the Merger Agreement) and the achievement of Milestone #1 (as defined in the CVR Agreement).

(b) **Future Payments.** With respect to the Company’s Contingent Net Sales of Covered Products on and after the Amendment Effective Date, the Company hereby agrees to pay The Foundry quarterly non-refundable payments (“**Contingent Royalty Payments**”, and together with the Contingent Accrued Payment, “**Contingent Payments**”) equal to:

(i) one and one-half percent (1.5%) of the Company’s Contingent Net Sales of Covered Products; and

(ii) one and one-half percent (1.5%) of the Company’s Contingent Net Sales of Patented Products (“**Patented Product Payment**”);

in each case (i) and (ii) accordance with the provisions of Section 3.8(a)(ii) (as provided below).

For the avoidance of doubt, any payments which may be payable to The Foundry pursuant this Section 2 shall, after giving effect to the terms of the Assignment Agreement, be due and payable to the Assignees, with each Assignee being entitled to his, or her Pro Rata Portion of such amounts.

3. Section 3.8(a) of the License Agreement is hereby deleted in its entirety and replaced with the following new Section 3.8(a) (which replacement shall be deemed an amendment to the Assignment Agreement to the extent any rights under such Assignment Agreement related to Section 3.8(a) of the License Agreement):

(a) Payment Dates. The Company shall, prior to the Settlement Date, pay to The Foundry all Contingent Payments as follows:

(i) With respect to the Contingent Accrued Payment due under Section 3.4(a), within sixty (60) days of the Milestone Payment Date (as defined in the CVR Agreement) following the achievement of Milestone #1; provided that, upon the achievement of Milestone #1, the Company shall reserve an additional amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the “Foundry Holdback Amount”), which:

(1) in the event no Claim is delivered prior to the Closing Holdback Release Date in accordance with (and as each such term is defined in) Section 4, shall be due and payable to The Foundry in full; and

(2) in the event any Claim is so timely delivered, such Foundry Holdback Amount shall be available to Parent and the Company as a source of recovery in respect of the indemnification obligations of The Foundry (to the extent such recovery is not fully satisfied from the Closing Holdback Amount, as defined in the Note Amendment in accordance with Section 4 hereof) and/or all or a portion thereof shall be payable to The Foundry, each in accordance with the terms of Section 4 hereof;

in each case, for the avoidance of doubt, with such amounts not becoming due and payable to The Foundry until the later of (A) the achievement of Milestone #1 and (B) the Closing Holdback Release Date (as defined below).

(ii) With respect to any Contingent Royalty Payments due under Section 3.4(b), within sixty (60) days after the end of each calendar quarter of each year in which Covered Products or Patented Products are sold. For the purposes of this Section 3.8, the end of each calendar quarter shall take place on the following dates, respectively: March 31, June 30, September 30, and December 31.

For the avoidance of doubt, any payments which may be payable to The Foundry pursuant this Section 3 shall, after giving effect to the terms of the Assignment Agreement, be due and payable to the Assignees, with each Assignee being entitled to his, or her Pro Rata Portion of such amounts.

4. Indemnification.

4.1 Subject to the terms of this Section 4, the Foundry Holdback Amount shall be

available to indemnify, defend and hold harmless Parent, the Company and their officers, directors, agents and employees, and each Person (as defined in the Merger Agreement), if any, who controls or may control Parent within the meaning of the Securities Act of 1933, as amended (each of the foregoing being referred to individually as an “**Indemnified Person**” and collectively as “**Indemnified Persons**”) from and against a portion (such portion determined in accordance with Section 4.2) of the losses, liabilities, claims, damages, fees, costs and expenses, including costs of investigation, costs of defense and settlement and reasonable fees and expenses of lawyers, experts and other professionals (collectively, “**Damages**”) directly or indirectly arising out of or resulting from any Legal Proceeding (as defined in the Merger Agreement) brought by an equityholder or creditor of the Company in its capacity as such to the extent related to the negotiation, execution, consummation (or approval of the foregoing by the Company’s Board of Directors) of the Offer, the Merger, the Merger Agreement and the Transactions (as defined in the Merger Agreement), including, for the avoidance of doubt, (i) any indemnification of, or expenses advanced or reimbursed to, a director or officer of the Company in connection with any such Legal Proceeding and (ii) any appraisal actions under Section 262 of the Delaware General Corporation Law, as amended, by any holders of Company Common Stock (as defined in the Merger Agreement) (provided, for the avoidance of doubt, that Indemnifiable Damages shall not include any payment of the Offer Price made in respect of any Dissenting Shares (as defined in the Merger Agreement)) (any such Damages which are ultimately determined to be indemnifiable hereunder, “**Indemnifiable Damages**”).

4.2 Parent acknowledges and agrees that contemporaneous with the execution of this Amendment, Parent and the Company are entering in the Note Amendment (the “**Note Amendment**”) with the Investors (as defined therein) pursuant to which Parent has agreed to pay to the Investors amounts equal to One Million Dollars (\$1,000,000) upon the Closing of the Merger (the “**Closing Holdback Amount**”) and Five Hundred Thousand Dollars (\$500,000.00) (the “**Milestone Holdback Amount**”, collectively, the “**Investor Holdback Amount**”). The Milestone Holdback Amount shall be paid subject to substantially the same terms as the payment of the Foundry Holdback Amount, and which Closing Holdback Amount and Milestone Holdback Amount shall be subject to substantially the same indemnification terms as those set forth in this Section 4. It is the intent of the Parent and The Foundry that the Assignees (collectively) and the Investors (collectively) shall each be responsible for, and the Investor Holdback Amount and the Foundry Holdback Amount shall each be severally and not jointly available to indemnify and hold harmless the Indemnified Persons against, fifty percent (50%) of any Indemnifiable Damages. Notwithstanding the foregoing, the Assignees agree that to the extent at any point any Indemnifiable Damages are recoverable hereunder, and at such time Milestone #1 has not been achieved, then 100% of such Indemnifiable Damages may be recovered from the Closing Holdback Amount, to the extent available. To the extent at any point thereafter Milestone #1 is achieved, and the Closing Holdback Amount was not sufficient to fully satisfy all Indemnifiable Damages indemnifiable under this Amendment, the Indemnified Persons shall be entitled to recover such shortfall (i) first from the Foundry Holdback Amount, until the amount of such recovery equals \$1,000,000 and (ii) second, fifty percent (50%) from the Foundry Holdback Amount and fifty percent (50%) from the Milestone Holdback Amount. In addition, to the extent, after the application of the foregoing provisions, the Investors have indemnified Parent for more than 50% of Indemnifiable Damages under this Amendment and the Note Amendment (in the aggregate), and Milestone #1 has been achieved, then the Assignees, or Parent on behalf of the Assignees, shall, in accordance with their

Pro Rata Portions, remit an amount from the Foundry Holdback Amount otherwise payable to the Assignees to the Investors (in accordance with their Pro Rata Portions under the Note Amendment) such that each of the Investors (in the aggregate) and the Assignees (in the aggregate) shall have received 50% of the aggregate amount of the Total Holdback Amount payable to all such parties. The Investors shall be deemed third party beneficiaries of the foregoing sentence with rights of enforcement.

4.3 In no event shall The Foundry or any Assignee have any direct liability to any Indemnified Person with respect to any Indemnifiable Damages, nor, other than in respect of the Foundry Holdback Amount pursuant to the terms of this Section 4, shall Parent, the Company or any other Indemnified Person be entitled to set off against any amounts otherwise payable to The Foundry or any Assignee under this Agreement or otherwise, including the Contingent Payments or the Contingent Accrued Payment (to the extent otherwise payable).

4.4 In order for any Indemnified Person to seek indemnification pursuant to this Section 4, Parent (on behalf of such any such Indemnified Person) shall, prior to the one (1) year anniversary of the consummation of the Merger (the “**Closing Holdback Release Date**”), provide the Assignee Representative a notice in writing (a “**Claim Notice**”) describing in reasonable detail the facts giving rise to any claim for indemnification hereunder (a “**Claim**”) and specifying in reasonable detail the amount of Damages paid, incurred, suffered or sustained in connection therewith, or the basis for any Damages anticipated to be so paid, incurred, suffered or sustain in connection therewith, which the Indemnified Persons reasonably believe constitute Indemnifiable Damages (such aggregate amount of Indemnifiable Damages described in all validly delivered Claim Notices, the “**Claimed Damages**”). After the giving of any Claim Notice pursuant hereto, the amount of the Claimed Damages to which an Indemnified Person is entitled under this Section 4 will be determined: (A) by the written agreement between the Indemnified Person and the Assignee Representative; (B) by a final judgment or decree of any court of competent jurisdiction; or (C) by any other means to which the Indemnified Person and the Assignee Representative shall agree. The judgment or decree of a court of competent jurisdiction will be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined.

4.5 Contemporaneously with the payment of the Contingent Accrued Payment, if payable, the Company shall pay to each Assignee its Pro Rata Portion of (i) the Foundry Holdback Amount *less* (ii) all Claimed Damages which as of such time had been finally determined to be Indemnifiable Damages hereunder and which were recovered from the Foundry Holdback Amount *less* (iii) all Claimed Damages which as of such time remain subject to a final determination as to whether or not such Claimed Damages constitute Indemnifiable Damages and which would be recoverable from the Foundry Holdback Amount (taking into account the terms of Section 4.2) (the amount described in this subsection (iii), the “**Retained Foundry Holdback Amount**”). Following such time, to the extent any such pending Claim is finally resolved, as soon as practicable, but in no event more than ten (10) days, thereafter, the Company shall pay to each Assignee its Pro Rata Portion of that portion of the Retained Foundry Holdback Amount retained in respect of such Claim which was not finally determined to constitute Indemnifiable Damages recoverable from the Foundry Holdback Amount (taking into account the terms of Section 4.2).

4.6 Assignee Representative

4.6.1 By virtue of the execution and delivery of this Agreement, each Assignee shall be deemed to have agreed to appoint Hanson S. Gifford III as its agent and attorney-in-fact, as the Assignee Representative for and on behalf of the Assignees to give and receive notices and communications in respect of Claims under this Agreement, to authorize payment to any Indemnified Person from the Foundry Holdback Amount in satisfaction of any Claims, to object to such payments and to agree to, negotiate, enter into settlements and compromises of and comply with orders of courts with respect to any such Claims, in each case relating to this Agreement, and to take all other actions that are necessary or appropriate in the judgment of the Assignee Representative for the accomplishment of the foregoing. Such agency may be changed by the Assignees from time to time upon not less than thirty (30) days prior written notice to the Company; *provided, however*, that the Assignee Representative may not be removed unless Assignees holding a majority of the Pro Rata Portion agree to such removal and to the identity of the substituted agent.

4.6.2 A decision, act, consent or instruction of the Assignee Representative within the scope of this Section 4 shall constitute a decision of the Assignees and shall be final, binding and conclusive upon the Assignees and the Company may rely upon any such decision, act, consent or instruction of the Assignee Representative as being the decision, act, consent or instruction of the Assignees.

4.6.3 Parent and the Company hereby covenant and agree to provide the Assignee Representative with reasonable access, during normal business hours, to all applicable books, records and employees, and other applicable information in the custody or control of Parent or the Company in connection with or related to any Claim, the discharge of the Assignee Representative's duties hereunder and the administration and resolution of any such Claim; *provided* that neither Parent nor the Company shall not be obligated to provide information or access to information to the extent that such provision or access would result in the loss of attorney-client privilege.

4.6.4 The Assignee Representative shall not be liable for any act done or omitted hereunder as Assignee Representative while acting in good faith. The Assignees shall indemnify the Assignee Representative and hold the Assignee Representative harmless against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses arising out of or in connection with the acceptance or administration of the Assignee Representative's duties hereunder, including the fees and expenses of any legal counsel or experts retained by the Assignee Representative ("***Assignee Representative Expenses***") in each case as such Assignee Representative Expense is suffered or incurred; *provided*, that in the event that any such Assignee Representative Expense is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Assignee Representative, the Assignee Representative will reimburse the Assignees the amount of such indemnified Assignee Representative Expense to the extent attributable to such gross negligence or willful misconduct. If not paid directly to the Assignee Representative by the Assignees, any such Assignee Representative Expenses may be recovered by the Assignee Representative from Foundry Holdback Amount.

5. Parent hereby covenants and agrees to be bound by the terms of Section 6.11 of the CVR Agreement as though such obligations were set forth in this Amendment, *mutatis mutandis*. In addition, to the extent Parent provides any notice to the Rights Agent (as defined in the CVR Agreement) pursuant to Sections 2.4, Section 4.3 or otherwise, it shall simultaneously deliver a true and complete copy of such notice to the Assignee Representative.

6. This Amendment shall be deemed effective upon the due execution and delivery of this Amendment by the Company and the Assignees; *provided* that, upon the termination of the Merger Agreement pursuant to Section 8.1 thereof, or the mutual written agreement of the Parent, the Company and Assignees who collectively represent more than 50% of the Pro Rata Portion prior to the closing of the Merger, this Agreement shall automatically terminate and be of no further force or effect, and the agreements set forth in this Amendment shall be deemed ineffective, retroactive to the date hereof, and the License Agreement and the Assignment Agreement shall be deemed to remain in their original form without giving effect to any of the amendments set forth herein.

7. Any provision of this Amendment may be amended, waived or modified only upon the written consent of the Parent, the Company and Assignees who collectively represent more than 50% of the Pro Rata Portion; *provided, however*, that any amendment, waiver or consent which may have a material adverse effect on an Assignee in a manner different from the effect of such amendment, waiver or consent on one or more other Assignees shall require the prior written consent of the affected Assignee.

8. Except as otherwise expressly modified or amended hereby, all terms and conditions of the License Agreement and the Assignment Agreement shall remain in full force and effect as presently written, and the rights, duties, liabilities and obligations of the parties thereto, as presently constituted, will continue in full effect.

9. This Amendment may be executed in counterparts, each of which when executed shall be deemed to be an original and both of which together shall constitute one and the same document. Signatures to this Amendment delivered by facsimile or similar electronic transmission (e.g., portable document format (PDF)) will be deemed binding as originals.

[Intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the parties have executed, or have caused their duly authorized representatives to execute, this Amendment effective as of the Amendment Effective Date.

MIRAMAR LABS, INC.

By: /s/ R. Michael Kleine

Name: R. Michael Kleine

Title: President & CEO

Date: June 11, 2017

THE FOUNDRY, LLC

By: /s/ Mark Deem

Name: Mark Deem

Title: Managing Member

Date: June 11, 2017

SIENTRA, INC.

By: /s/ Charles Huiner

Name: Charles Huiner

Title: Chief Operating Officer

Date: June 11, 2017

ASSIGNEES

/s/ Henry A. Plain Jr.

Henry A. Plain Jr.

K. Angela Macfarlane

K. Angela Macfarlane

/s/ Steven Kim

Steven Kim

/s/ Hanson S. Gifford III

Hanson S. Gifford III

/s/ Mark E. Deem

Mark E. Deem

/s/ Kara Leibig

Kara Leibig

ANNEX A

Assignee	Pro Rata Portion
Henry A. Plain, Jr.	20.00%
K. Angela Macfarlane	11.50%
Steven Kim	10.00%
Hanson S. Gifford, III	31.00%
Mark E. Deem	22.82%
Kara Liebig	4.68%



Sientra to Acquire Miramar Labs®

miraDry® System is the Only FDA Cleared Device to Reduce Underarm Sweat, Odor and Permanently Reduce Hair of All Colors

Sientra Intends to Secure a \$50 Million Credit Facility

Aesthetic Industry Veteran Keith Sullivan Joins Sientra as Strategic Advisor

Sientra to Host Conference Call at 5:30am PT / 8:30am ET Today

Santa Barbara, CA and Santa Clara, CA – June 12, 2017 – Sientra, Inc. (NASDAQ: SIEN) (“Sientra” or the “Company”), a medical aesthetics company, and Miramar Labs, Inc. (OTCQB: MRLB) (“Miramar”), a global medical device company dedicated to bringing innovative and clinically proven applications to treat unmet needs in the aesthetic marketplace, announced today that they have entered into a definitive agreement under which Sientra has agreed to acquire Miramar for an aggregate transaction value of \$20 million in upfront cash plus contractual rights for potential contingent payments of up to \$14 million in cash upon the achievement of certain milestones, which would be paid to holders of Miramar equity, debt and other obligations.

The acquisition of Miramar significantly broadens Sientra’s aesthetics portfolio, adding the miraDry system, the only FDA cleared device to reduce underarm sweat, odor and permanently reduce hair of all colors. The miraDry non-invasive procedure is safe and highly efficacious with a proven commercial and clinical track record. As of the first quarter 2017, over 90,000 treatments have been sold to date with over 900 systems installed worldwide and 2016 full year revenue of approximately \$20 million, up 19% year-over-year.

Jeffrey M. Nugent, Chairman and Chief Executive Officer of Sientra, said, “The acquisition of Miramar will be a significant step toward our stated intent of building Sientra into a diversified global aesthetic company. We remain highly confident in the core Sientra business as we prepare for relaunch and expansion moving into 2018 and continue to expect approval of the PMA Supplement for our new U.S. based manufacturing site by the end of 2017. The two organizations are highly complementary, and together we believe we can build greater shareholder value. We believe this novel technology will meaningfully expand our addressable market and will be revenue accretive in the second half of 2017 at a very attractive valuation. The miraDry procedure is well recognized by key opinion leaders as a

highly efficacious technology that delivers results patients want and contributes to aesthetic practice growth, as demonstrated by its over 20% revenue CAGR over the past three years.”

Mike Kleine, President and Chief Executive Officer of Miramar said, “We are excited to become part of Sientra, as it will enable us to advance our vision for making miraDry a leading efficacious procedure in the practices of aesthetic physicians. In addition, this combination will bring the additional capital investment needed in sales and marketing to allow scaling of miraDry’s installed base by leveraging Sientra’s expanded customer base and their sales team. Finally, I would like to thank the employees of Miramar for their dedication and perseverance in bringing this novel miraDry technology to the forefront of the aesthetics market.”

Mr. Nugent continued, “We believe we can leverage this platform to further improve miraDry’s commercial results by deploying proven marketing programs in the capital and consumable aesthetic space backed by our ability to fund the needed investments in sales and marketing. Through cross marketing, sales force expansion, enhanced branding and promotion, and potential bundling opportunities, we see significant opportunity to improve miraDry sales. Overall, we expect the transaction to be meaningfully accretive to full year 2018 revenues and we expect to generate positive cash flow faster as a combined company than Sientra would have achieved as a stand-alone business. We look forward to working with the Miramar team and welcome them to the Sientra family.”

Bruce W. Van Natta, MD of Meridian Plastics Surgeons of Indianapolis, IN, said, “I have been very pleased with both the clinical outcomes and patient interest in the miraDry procedure. It uniquely offers the triple benefit of treating sweat, odor and axillary hair of all colors. I have offered the miraDry procedure in my practice for over two years and continue to see the growth of lifestyle treatments like miraDry. I have had the procedure myself and love the results. I am truly excited that Sientra is continuing to support our business growth by adding miraDry to their aesthetics portfolio.”

Sientra also announced that aesthetic industry veteran, Keith Sullivan, has joined Sientra as Strategic Advisor and will advise on the commercial efforts for the Miramar business. Mr. Sullivan was most recently Chief Commercial Officer and President of North America at ZELTIQ and prior to that ran the ZELTIQ global marketing and sales organization. Under his tenure, ZELTIQ achieved a four-year revenue CAGR of nearly 50% building from \$76 million in 2012 to \$355 million in 2016.

Keith Sullivan, Strategic Advisor to Sientra, said, “I am excited to begin advising Jeff and the team on growing the miraDry procedure. I see many similarities between the MiraDry and CoolSculpting procedures and business models. They both have all the key attributes of a lifestyle aesthetics platform, with a capital plus consumable business model that should achieve broad based consumer adoption. I believe that Sientra can apply gold-standard aesthetic sales, physician training and marketing tactics to build the miraDry global brand, drive broader system placements, increase utilization and thereby build real scale in one of the last remaining large and underpenetrated aesthetic markets.”

William Blair 37th Annual Growth Conference

Jeff Nugent, President and Chief Executive Officer, and Patrick F. Williams, Chief Financial Officer, will be in Chicago, IL for the William Blair 37th Annual Growth Stock Conference and are scheduled to present Thursday, June 15, 2017 at 8:40 a.m. PT / 11:40 a.m. ET.

An audio webcast of the Company's presentation will be made available on the investor relations section of Sientra's web site at www.sientra.com. Replays of the presentations will be available for 90 days.

Transaction Terms

The transaction is structured as a cash tender offer to acquire all of the outstanding shares of Miramar's common stock, after settlement of Miramar debt and other obligations, the transaction contemplates an offer price of \$0.3149 per share plus the contractual right to receive one or more contingent payments of up to approximately \$0.7058 per share upon the achievement of certain sales-based milestones. The tender offer will be followed by a merger in which each remaining untendered share of Miramar's common stock would be converted into the right to receive the same purchase price per share and contingent cash consideration. The transaction, which has been approved by the board of directors of both Sientra and Miramar, is subject to the satisfaction of customary closing conditions, including the tender of a majority of shares of Miramar common stock. Holders of approximately 73% of the shares of Miramar common stock in the aggregate have entered into Tender and Support Agreements, which obligate such holders to tender their shares into the tender offer. The Tender and Support Agreements terminate automatically, among other things, upon the termination of the Merger Agreement, including if Miramar terminates the agreement in favor of a Superior Offer (as defined in the Merger Agreement).

The transaction is not subject to a financing condition. Sientra has sufficient cash on hand to finance the transaction, and has also signed a term sheet with MidCap Financial Services and Silicon Valley Bank for a \$50 million credit facility. Subject to the execution of definitive agreements, the credit facility will be comprised of \$40 million in term debt that is accessible in three tranches and a \$10 million revolver. The new credit facility is intended to replace Sientra's existing \$20 million credit facility announced in March of 2017.

Advisors

In connection with the transaction and the debt financing, Stifel acted as a financial advisor to Sientra, and Cooley LLP acted as legal counsel to Sientra. Canaccord Genuity acted as financial advisor and Wilson Sonsini Goodrich & Rosati acted as legal counsel for Miramar.

Conference Call and Webcast Information

Sientra will hold a conference call and webcast today, June 12, 2017 at 8:30am ET to discuss the acquisition, followed by a question and answer session. The dial-in numbers are (844) 464-3933 for

domestic callers and (765) 507-2612 for international callers. The conference ID is 38212328. A live webcast of the conference call and accompanying presentation slides will be available on the Investor Relations section of the Company's website at www.sientra.com.

A replay of the conference call will be available through June 26, 2017 and can be accessed by dialing (855) 859-2056. The conference ID for the replay is 38212328. The webcast will be available on the Investor Relations section of the Company's website following the completion of the call.

About Sientra

Headquartered in Santa Barbara, California, Sientra is a medical aesthetics company committed to making a difference in patients' lives by enhancing their body image, growing their self-esteem and restoring their confidence. The Company was founded to provide greater choice to board-certified plastic surgeons and patients in need of medical aesthetics products. The Company has developed a broad portfolio of products with technologically differentiated characteristics, supported by independent laboratory testing and strong clinical trial outcomes. The Company sells its breast implants and breast tissue expanders exclusively to board-certified and board-admissible plastic surgeons and tailors its customer service offerings to their specific needs. The Company also offers a range of other aesthetic and specialty products including BIOCORNEUM[®], the professional choice in scar management.

About Miramar Labs

Headquartered in Santa Clara, California, Miramar Labs is a global medical device company dedicated to bringing innovative and clinically proven applications to treat unmet needs in the aesthetic marketplace. Supported by rigorous clinical research, Miramar Labs is focused on addressing aesthetic medical conditions for which there are significant unmet clinical needs. The company's first priority is the treatment of bothersome underarm sweat, an issue that hundreds of millions of people deal with daily. The miraDry procedure has an established safety and efficacy profile with over 90,000 patients treated worldwide. Physicians and patients are encouraged to visit www.miramarlabs.com or www.miradry.com for additional information.

Forward- looking statements

This press release contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements include, but are not limited to, statements related to the anticipated consummation of the acquisition of Miramar and the timing and benefits thereof, the performance of the miraDry system, Sientra's strategy, plans, objectives, expectations (financial or otherwise) and intentions, future financial results and growth potential, expected source and amount of funding for the acquisition, the ability to consummate the closing of the new credit facility, and other statements that are not historical facts. These forward-looking statements are based on management's current assumptions and expectations and inherently involve significant risks and uncertainties. Actual results

and the timing of events could differ materially from those anticipate in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, risks related to our ability to complete the transaction on the proposed terms and schedule, risks associated with acquisitions, such as the risk that the business will not be integrated successfully, that such integration may be more difficult, time-consuming or costly than expected or that the expected benefits of the transaction will not occur, risks related to future opportunities and plans for the acquired company and its products, including uncertainty of the expected financial performance of the acquired company and its products, our ability to obtain expected financing, the calculations of, and factors that may impact the calculations of, the acquisition price in connection with the proposed merger as well as other risks related to our business as can be found in the Risk Factors section of Sientra's most recently filed Quarterly Report on Form 10-Q and and its Annual Report on Form 10-K for the year ended December 31, 2016. All statements other than statements of historical fact are forward-looking statements. The words "believe," "may," "might," "could," "will," "aim," "estimate," "continue," "anticipate," "intend," "expect," "plan," or the negative of those terms, and similar expressions that convey uncertainty of future events or outcomes are intended to identify estimates, projections and other forward-looking statements. Estimates, projections and other forward-looking statements speak only as of the date they were made, and, except to the extent required by law, Sientra undertakes no obligation to update or review any estimate, projection or forward-looking statement.

Additional Information and Where to Find It

The tender offer described in this communication (the "Offer") has not yet commenced and this communication is neither an offer to purchase nor a solicitation of an offer to sell shares of Miramar or other securities, nor is it a substitute for the tender offer materials that Sientra and its acquisition subsidiary will file with the SEC upon commencement of the tender offer. At the time the Offer is commenced, Sientra and its acquisition subsidiary will file tender offer materials on Schedule TO, and Miramar will file a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC with respect to the Offer. The tender offer materials (including an Offer to Purchase, a related Letter of Transmittal and certain other tender offer documents) and the Solicitation/Recommendation Statement, as they may be amended from time to time, will contain important information. Holders of Miramar's securities are urged to read these documents when they become available because they will contain important information that holders of Miramar's securities should consider before making any decision regarding tendering their securities. The Offer to Purchase, the related Letter of Transmittal and certain other tender offer documents, as well as the Solicitation/Recommendation Statement, will be made available to all holders of Miramar securities at no expense to them. Investors and security holders may obtain free copies of these documents (when they are available) and other related documents filed with the SEC at the SEC's web site at <http://www.sec.gov> or by directing such requests to the Information Agent for the Offer, which will be named in the tender offer statement.

Investor Contacts:

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): June 11, 2017

MIRAMAR LABS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

333-191545
(Commission File Number)

80-0884221
(IRS Employer
Identification No.)

**2790 Walsh Avenue
Santa Clara, California 95051**

(Address of principal executive offices, including zip code)

(408) 579-8700

(Registrant's telephone number, including area code)

Not Applicable

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

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

Agreement and Plan of Merger and Related Transactions

On June 11, 2017, Miramar Labs, Inc., a Delaware corporation (the “Company”), Sientra, Inc., a Delaware corporation (“Parent”), and Desert Acquisition Corporation, a Delaware corporation and wholly owned subsidiary of Parent (“Purchaser”), entered into an Agreement and Plan of Merger (the “Merger Agreement”). Pursuant to the Merger Agreement, and upon the terms and subject to the conditions thereof, Purchaser has agreed to commence a cash tender offer to acquire all of the outstanding shares of the Company’s common stock (the “Offer”) for a purchase price of (i) \$0.3149 per share, in cash, without interest (the “Cash Portion”) and (ii) the contractual right (a “CVR”), pursuant to the Contingent Value Rights Agreement in the form attached as Annex II to the Merger Agreement (as it may be amended from time to time, the “CVR Agreement”), to receive one or more contingent payments upon the achievement of certain milestones as set forth in the CVR Agreement, without interest (the “CVR Portion”, and together with the Cash Portion, the “Offer Price”), subject to any applicable withholding and upon the terms and subject to the conditions of the Merger Agreement. Capitalized terms used but not otherwise defined herein shall have their respective meanings ascribed to such terms in the Transaction Documents or Support Agreements (each as defined below), as applicable.

The consummation of the Offer will be conditioned on (i) a majority of all shares of the Company’s outstanding common stock having been validly tendered into and not validly withdrawn from the Offer and (ii) other customary conditions. The Offer is not subject to a financing condition.

Following the consummation of the Offer, subject to customary conditions, Purchaser will be merged with and into the Company (the “Merger”) and the Company will become a wholly owned subsidiary of Parent, pursuant to the procedure provided for under Section 251(h) of the Delaware General Corporation Law (the “DGCL”) without any additional stockholder approvals. In the Merger, each outstanding share of the Company’s common stock (other than shares held by the Company (or held in the Company’s treasury), Parent, Purchaser, any of other wholly owned subsidiary of Parent, or any wholly owned subsidiary of the Company, or shares with respect to which appraisal rights are properly exercised under the DGCL) will be converted into the right to receive the Offer Price, subject to any applicable withholding.

The Merger Agreement provides that, as of the effective time of the Merger (the “Effective Time”), (1) each stock option to purchase shares of the Company’s common stock that is then outstanding and unexercised (the “Company Options”), whether or not vested, shall be cancelled, and with respect to those persons holding Company Options for which the per share Cash Portion is greater than the applicable per share exercise price (each an “In-the-money Option”), each such cancelled In-the-money Option shall be converted into the right to receive (i) cash in an amount equal to (A) the total number of shares subject to such Company Option immediately prior to the Effective Time (without regard to vesting) multiplied by (B) the excess, if any, of (x) the Cash Portion over (y) the exercise price payable per share under such Company Option, without interest, plus (ii) the right to receive the CVR Portion for each share subject to such In-the-money Option (without regard to vesting), which amount shall be paid in accordance with the CVR Agreement, (2) no holder of a cancelled Company Option that is not an In-the-money Option shall be entitled to any payment with respect to such cancelled Company Option before or after the Effective Time, and (3) the Company shall accelerate (contingent upon the Effective Time) the vesting of each unvested Company Option on the date that is at least ten (10) calendar days prior to the Effective Time (such date, the “Acceleration Date”) and, for a period of at least five (5) calendar days following the Acceleration Date, allow each holder of a Company Option to exercise all or a portion of the Company Option, effective immediately prior to, and contingent upon, the Effective Time.

The Merger Agreement contains customary representations, warranties and covenants of the parties. In addition, under the terms of the Merger Agreement, the Company has agreed not to solicit, initiate or knowingly facilitate or encourage any Acquisition Proposals (as defined in the Merger Agreement), subject to customary exceptions that permit the Company to respond to any unsolicited Acquisition Proposal, provided that the Company’s board of directors has determined in good faith (after consultation with the Company’s outside legal counsel) that the failure to do so would likely constitute a breach of its fiduciary duties. The Company is also permitted to change its recommendation in favor of the Offer or to terminate the Merger Agreement in order to accept an unsolicited Superior Offer (as defined in the Merger Agreement) (subject to compliance with the procedures set forth in the Merger Agreement), provided that the Company’s board of directors has determined in good faith (after consultation with the Company’s outside legal counsel) that the failure to do so would likely

constitute a breach of its fiduciary duties. Parent has the right to match any alternative Acquisition Proposal so that such proposal fails to be a Superior Offer, which would otherwise allow the Company to terminate the Merger Agreement. If the Company is permitted to terminate the Merger Agreement and does so, under such circumstances, the Company must pay Parent, concurrently with such termination, a \$100,000 termination fee. In addition, this termination fee is payable by the Company to Parent under other specified circumstances and in certain circumstances Parent is entitled to reimbursement of expenses incurred in connection with the transaction contemplated in the Merger Agreement.

Tender and Support Agreements

Concurrently with the execution of the Merger Agreement, the majority of the members of the Company's board of directors who hold shares of Company Common Stock, stockholders who are affiliated with such members, and other stockholders, in their respective capacities as stockholders of the Company, entered into Tender and Support Agreements with Parent and Purchaser (the "Support Agreements"), pursuant to which the signatories have agreed, among other things, to tender their respective shares of the Company's common stock into the Offer and, during the period from the date of such Support Agreements through the earlier of the date upon which (i) the Merger Agreement is validly terminated, (ii) the Merger becomes effective, or (iii) any amendment or change to the Merger Agreement or the Offer is effected without the signatory's consent that decreases the amount, or changes the form, timing (except with respect to extensions of the Offer in accordance with the terms of the Merger Agreement), or likelihood of payment of consideration payable to all of the stockholders of the Company pursuant to the terms of the Merger Agreement or the CVR Agreement (the "Support Period"), to vote their Subject Securities (as defined in the Support Agreements) in favor of the Merger, against any action or action that to the signatory's knowledge would reasonably cause a failure of a condition to the Offer to be satisfied, and against any alternative Acquisition Proposals, any amendment to the Company's certificate of incorporation or bylaws, or any change in a majority of the board of directors of the Company. Shares held by the signatories to the Support Agreements that are eligible to be tendered into the Offer represent, in the aggregate, approximately 73% of the Company's common stock outstanding on the date of the Merger Agreement (excluding common stock issuable upon exercise of Company Options or Company Warrants). Each of the Support Agreements will terminate upon the termination or expiration of the Support Period.

Contingent Value Rights Agreement

At or prior to the time that Purchaser accepts for payment all shares validly tendered and not properly withdrawn pursuant to the Offer, Parent and a trustee mutually acceptable to Parent and the Company will enter into the CVR Agreement to govern the terms of the CVRs.

Each share of Company common stock held by such shareholder that (i) the Purchaser accepts for payment from such holder pursuant to the Offer or (ii) is owned by or has been issued to such holder as of immediately prior to the Effective Time and is converted into the right to receive the Offer Price pursuant to the terms of the Merger Agreement, will be entitled to receive a CVR Portion equal to one CVR. The CVRs are not transferable except under certain limited circumstances, will not be evidenced by a certificate or other instrument and will not be registered or listed for trading. The CVRs will not have any voting or dividend rights and will not represent any equity or ownership interest in Parent, Purchaser, the Company or any of their affiliates.

Each CVR represents the right to receive the following cash payments, without interest and less any applicable withholding taxes, with each payment conditioned upon the achievement of certain milestones as follows:

- Milestone #1: Parent will be obligated to pay \$0.0147 per CVR if cumulative Net Sales (as defined in the CVR Agreement) of the Product (as defined in the CVR Agreement) worldwide following the Closing exceed \$50,000,000.
- Milestone #2: Parent will be obligated to pay \$0.6911 per CVR if cumulative Net Sales of the Product worldwide following the Closing exceed \$80,000,000 (which calculation, for the avoidance of doubt, shall be inclusive of any Net Sales counted in the determination of Milestone #1).

The CVRs are complex instruments and a number of factors will determine whether any amount will actually be paid to the Company's stockholders in accordance with the terms of the CVR Agreement.

If none of the milestones are met, the CVRs will have no value. The minimum payment under the CVRs is zero and, assuming the satisfaction of all milestones, the maximum aggregate cash payment represented by one CVR is \$0.7058. There can be no assurance that the various milestones set forth in the CVR Agreement will be achieved and that the resulting payments will be required of Parent.

Note Amendment

The Company previously announced on February 2, 2017 that it had issued subordinated secured convertible promissory notes (the "Notes") pursuant to that certain Note Purchase Agreement, dated as of January 27, 2017 (the "Note Purchase Agreement"), to the Investors (as defined in the Note Purchase Agreement).

Concurrently with the execution of the Merger Agreement, the Company, Parent and the Investors entered into an Omnibus Amendment to Subordinated Secured Convertible Promissory Notes (the "Note Amendment"), pursuant to which the Investors agreed that the Notes will be amended and restated to effect the cancellation of the Notes, subject to the consummation of the Merger, in exchange for and upon receipt from Parent of payment to each Investor of its portion of (a) certain payments at the Closing and (b) contingent payments that are payable only upon the achievement of Milestone #1; *provided* that a portion of each of the amounts described in the preceding clauses (a) and (b) shall not be immediately payable by Parent but rather withheld by Parent as a source of recovery in respect of certain indemnification obligations to which the Investors have agreed in favor of Parent, the Company and their affiliates following the Closing, the terms of which are set forth in more detail in the Note Amendment.

Foundry Amendment

The Company previously entered into that certain Assignment and License Agreement effective as of December 31, 2008, as amended and/or clarified by certain letter agreements dated June 10 and 11, 2010 (collectively, the "Original Foundry Agreement") with The Foundry, Inc. (the "Foundry Inc."), pursuant to which the Foundry Inc. assigned to the Company certain Assigned Patents, Assigned Technology, and Related Documentation (each as defined in the Original Foundry Agreement) in exchange for certain royalty payments to be paid by the Company to the Foundry Inc. In connection with a liquidation and dissolution of the Foundry Inc.'s business, pursuant to that certain Revised and Restated Assignment Agreement date December 31, 2008 (the "Foundry Assignment Agreement"), the Foundry Inc. assigned all of its rights and obligations under the Original Foundry Agreement to The Foundry, LLC (the "Foundry") and the Foundry agreed to pay the royalty payments to certain individuals (the "Foundry Assignees"), with each Foundry Assignee being entitled to a pro rata portion of such amounts.

Concurrently with the execution of the Merger Agreement, the Company, Parent, the Foundry and the Foundry Assignees entered into an Amendment No. 1 to Assignment and License Agreement and Assignment Agreement (the "Foundry Amendment"), and together with the Merger Agreement and the Note Amendment, the "Transaction Documents"), pursuant to which the signatories agreed that all payments which may be payable to the Foundry will be payable to the Foundry Assignees and the Foundry Assignees will each instead be paid, subject to and contingent upon the occurrence of the Merger and the achievement of Milestone #1, their respective pro rata portions of (i) an amount equal to \$2,235,821.53 in full satisfaction of the amount of accrued royalty payments that may be owed by the Company to the Foundry Assignees as of the Closing; *provided* that a portion of such amount shall not be immediately payable by Parent upon the achievement of Milestone #1 but rather may be withheld by Parent as a source of recovery in respect of certain indemnification obligations to which the Foundry Assignees have agreed in favor of Parent, the Company and their affiliates following the Closing, the terms of which are set forth in more detail in the Foundry Amendment, and (ii) certain Contingent Royalty Payments based on the Company's Contingent Net Sales of Covered Products after the date of the Foundry Amendment (each as defined in the Foundry Amendment).

Additional Information

The foregoing descriptions of the Transaction Documents and the Support Agreements do not purport to be complete and are qualified in their entirety by reference to the Merger Agreement, which is attached as Exhibit 2.1 to this Current Report on Form 8-K, the Support Agreements, the form of which is attached as Exhibit 99.1 to this Current Report on Form 8-K, the CVR Agreement, the form of which is attached as Exhibit 99.2 to this Current Report on Form 8-K, the Note Amendment, which is attached as Exhibit 99.3 to this Current Report on Form 8-K, and the Foundry Amendment, which is attached as Exhibit 99.4 to this Current Report on Form 8-K, and in each case is incorporated herein by reference. The Merger Agreement has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company, Parent or Purchaser. The Transaction Documents and the Support Agreements contain representations and warranties by each of Parent, Purchaser, the Company and the signatories thereto, as applicable. These representations and warranties were made solely for the benefit of the parties to such agreements and:

- should not be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- may have been modified, qualified or excepted in the applicable agreement by information in confidential disclosure letter provided by the a party in connection with the signing of such agreement;
- may apply contractual standards of “materiality” that are different from “materiality” under applicable securities laws; and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in such agreement.

Accordingly, the representations and warranties in the Transaction Documents and the Support Agreements may not constitute the actual state of facts about the Company, Parent, Purchaser or any other signatory thereto.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

On June 11, 2017, the board of directors of the Company approved the amendment and restatement of the Amended and Restated Bylaws of the Company (the “Bylaw Amendment”), which became effective immediately. The Bylaw Amendment added a new provision to the Company’s Bylaws that designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain legal actions, unless the Company consents in writing to the selection of an alternative forum. The foregoing description of the Bylaw Amendment is only a summary, does not purport to be complete, and is qualified in its entirety by reference to the Bylaw Amendment, a copy of which is attached as Exhibit 3.1 and is incorporated herein by reference.

Item 8.01 Other Events.

On June 12, 2017, the Company issued a press release announcing the execution of the Merger Agreement. A copy of the press release is attached hereto as Exhibit 99.4 to this report.

Important Additional Information and Where to Find It

In connection with the proposed acquisition of the Company by Parent, Purchaser will commence a tender offer for all of the outstanding shares of the Company. Such tender offer has not yet commenced. This communication is for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell shares of the Company, nor is it a substitute for the tender offer materials that Parent and Purchaser will file with the United States Securities and Exchange Commission (the “SEC”) upon commencement of the tender offer. At the time that the tender offer is commenced, Parent and Purchaser will file tender offer materials on Schedule TO with the SEC, and the Company will file a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC with respect to the offer. THE TENDER OFFER MATERIALS (INCLUDING AN OFFER TO PURCHASE, A RELATED LETTER OF TRANSMITTAL AND CERTAIN OTHER TENDER OFFER DOCUMENTS) AND THE SOLICITATION/RECOMMENDATION STATEMENT WILL CONTAIN IMPORTANT INFORMATION THAT SHOULD BE READ CAREFULLY AND CONSIDERED BY THE COMPANY’S STOCKHOLDERS BEFORE ANY DECISION IS MADE WITH RESPECT TO THE TENDER OFFER. Both the tender

offer statement and the solicitation/recommendation statement will be made available to the Company's stockholders free of charge. A free copy of the tender offer statement and the solicitation/recommendation statement will also be made available to all stockholders of the Company by contacting the Company at 2790 Walsh Avenue, Santa Clara, California 95051, by phone at (408) 579-8700, or by visiting the Company's website (<http://miramarlabs.com/investors/>). In addition, the tender offer statement and the solicitation/recommendation statement (and all other documents filed with the SEC) will be available at no charge on the SEC's website (www.sec.gov) upon filing with the SEC. THE COMPANY'S STOCKHOLDERS ARE ADVISED TO READ THE TENDER OFFER STATEMENT AND THE SOLICITATION/RECOMMENDATION STATEMENT, AS EACH MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME, AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE BEFORE THEY MAKE ANY DECISION WITH RESPECT TO THE TENDER OFFER BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES TO THE TRANSACTION.

Forward Looking Statements

This document contains certain statements that constitute forward-looking statements. These forward-looking statements include, but are not limited to, statements regarding the satisfaction of conditions to the completion of the proposed transaction and the expected completion of the proposed transaction, as well as other statements that are not historical fact. These forward-looking statements are based on currently available information, as well as the Company's views and assumptions regarding future events as of the time such statements are being made. Such forward looking statements are subject to inherent risks and uncertainties. Accordingly, actual results may differ materially and adversely from those expressed or implied in such forward-looking statements. Such risks and uncertainties include, but are not limited to, the potential failure to satisfy conditions to the completion of the proposed transaction due to the failure to receive a sufficient number of tendered shares in the tender offer, as well as those described in cautionary statements contained elsewhere herein and in the Company's periodic reports filed with the SEC including the statements set forth under "Risk Factors" set forth in the Company's most recent annual report on Form 10-K and the Company's most recent quarterly report on Form 10-Q, the Tender Offer Statement on Schedule TO (including the offer to purchase, the letter of transmittal and other documents relating to the tender offer) to be filed by Parent and Purchaser, and the Solicitation/Recommendation Statement on Schedule 14D-9 to be filed by the Company. As a result of these and other risks, the proposed transaction may not be completed on the timeframe expected or at all. These forward-looking statements reflect the Company's expectations as of the date of this report. While the Company may elect to update any such forward-looking statements at some point in the future, the Company specifically disclaims any obligation to do so, even if our expectations change, except as required by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1	Agreement and Plan of Merger by and among Sientra, Inc., Desert Acquisition Corporation and Miramar Labs, Inc. dated as of June 11, 2017. (Certain schedules and annexes referenced in the Agreement and Plan of Merger have been omitted in accordance with Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or annex will be furnished as a supplement to the U.S. Securities and Exchange Commission upon request.)
3.1	Second Amended and Restated Bylaws of the Company.
99.1	Form of Tender and Support Agreement, by and among Sientra, Inc., Desert Acquisition Corporation and certain stockholders of Miramar Labs, Inc., dated as of June 11, 2017.
99.2	Form of Contingent Value Rights Agreement.
99.3	Omnibus Amendment to Subordinated Secured Convertible Promissory Notes, by and among Miramar Labs, Inc., Sientra, Inc. and certain other parties thereto, dated as of June 11, 2017.
99.4	Amendment No. 1 to Assignment and License Agreement and Assignment Agreement, by and between Miramar Labs, Inc., Sientra, Inc. and The Foundry, LLC and certain other parties thereto, dated as of June 11, 2017.
99.5	Joint Press Release, dated June 12, 2017 by Sientra, Inc. and Miramar Labs, Inc.

SIGNATURES

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

Dated: June 12, 2017

MIRAMAR LABS, INC.

By: /s/ R. Michael Kleine
Name: R. Michael Kleine
Title: Chief Executive Officer

EXHIBIT INDEX

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