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

# FORM 10-Q

**(Mark One)**

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

**For the quarterly period ended September 30, 2016**

**OR**

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

**For the transition period from _____ to _____**

**Commission file number: 0-26642**

# MYRIAD GENETICS, INC.
**(Exact name of registrant as specified in its charter)**

| **Delaware** | **87-0494517** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |
| **320 Wakara Way, Salt Lake City, UT** | **84108** |
| **(Address of principal executive offices)** | **(Zip Code)** |

**Registrant's telephone number, including area code: (801) 584-3600**

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

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

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

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

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

As of October 27, 2016 the registrant had 68,416,287 shares of $0.01 par value common stock outstanding.

**MYRIAD GENETICS, INC.**

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**MYRIAD GENETICS, INC.**
**AND SUBSIDIARIES**
Condensed Consolidated Balance Sheets (Unaudited)
(In millions)

| | September 30, 2016 | June 30, 2016 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 86.9 | $ 68.5 |
| Marketable investment securities | 61.5 | 90.5 |
| Prepaid expenses | 12.2 | 18.4 |
| Inventory | 53.9 | 38.3 |
| Trade accounts receivable, less allowance for doubtful accounts of $6.8 September 30, 2016 and $6.8 June 30, 2016 | 98.2 | 91.7 |
| Prepaid taxes | 5.6 | 3.8 |
| Other receivables | 4.6 | 3.3 |
| Total current assets | 322.9 | 314.5 |
| Property, plant and equipment, net | 56.8 | 58.3 |
| Long-term marketable investment securities | 52.2 | 79.9 |
| Intangibles, net | 521.2 | 227.5 |
| Goodwill | 312.8 | 195.3 |
| Other assets | 5.0 | 5.0 |
| Total assets | $ 1,270.9 | $880.5 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| Current liabilities: | | |
| Accounts payable | $ 19.9 | $ 21.1 |
| Accrued liabilities | 54.8 | 49.5 |
| Short-term debt | 199.2 | — |
| Deferred revenue | 1.0 | 1.7 |
| Total current liabilities | 274.9 | 72.3 |
| Unrecognized tax benefits | 24.4 | 24.0 |
| Other long-term liabilities | 148.7 | 18.2 |
| Long-term deferred taxes | 87.6 | 17.9 |
| Total liabilities | 535.6 | 132.4 |
| Commitments and contingencies | | |
| Stockholders' equity: | | |
| Common stock, 68.4 and 69.1 shares outstanding at September 30, 2016 and June 30, 2016 respectively | 0.7 | 0.7 |
| Additional paid-in capital | 826.9 | 830.1 |
| Accumulated other comprehensive loss | (5.6) | (9.5) |
| Accumulated deficit | (86.5) | (73.2) |
| Total Myriad Genetic, Inc. stockholders' equity | 735.5 | 748.1 |
| Non-Controlling Interest | (0.2) | — |
| Total stockholders' equity | 735.3 | 748.1 |
| Total liabilities and stockholders' equity | $ 1,270.9 | $880.5 |

See accompanying notes to condensed consolidated financial statements.

**MYRIAD GENETICS, INC.**
**AND SUBSIDIARIES**
Condensed Consolidated Statements of Operations (Unaudited)
(In millions, except per share amounts)

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Molecular diagnostic testing | $ 165.1 | $ 171.9 |
| Pharmaceutical and clinical services | 12.4 | 11.6 |
| Total revenue | 177.5 | 183.5 |
| Costs and expenses: | | |
| Cost of molecular diagnostic testing | 34.3 | 30.9 |
| Cost of pharmaceutical and clinical services | 5.7 | 5.6 |
| Research and development expense | 19.4 | 17.2 |
| Selling, general, and administrative expense | 111.9 | 86.5 |
| Total costs and expenses | 171.3 | 140.2 |
| Operating income | 6.2 | 43.3 |
| Other income (expense): | | |
| Interest income | 0.3 | 0.1 |
| Other | (2.5) | 0.1 |
| Total other income (expense): | (2.2) | 0.2 |
| Income before income tax | 4.0 | 43.5 |
| Income tax provision | 5.2 | 13.2 |
| Net income (loss) | $ (1.2) | $ 30.3 |
| Net income (loss) attributable to non-controlling interest | — | — |
| Net income (loss) attributable to Myriad Genetics, Inc. stockholders | $ (1.2) | $ 30.3 |
| Earnings (loss) per share: | | |
| Basic | $ (0.02) | $ 0.44 |
| Diluted | $ (0.02) | $ 0.42 |
| Weighted average shares outstanding: | | |
| Basic | 68.8 | 68.7 |
| Diluted | 68.8 | 72.1 |

See accompanying notes to condensed consolidated financial statements.

**MYRIAD GENETICS, INC.**
**AND SUBSIDIARIES**
Condensed Consolidated Statements of Comprehensive Income (Unaudited)
(In millions)

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Net income (loss) attributable to Myriad Genetics, Inc. shareholders | $ (1.2) | $ 30.3 |
| Unrealized gain (loss) on available-for-sale securities, net of tax | (0.4) | 0.1 |
| Change in foreign currency translation adjustment, net of tax | 4.3 | (0.2) |
| Comprehensive Income | 2.7 | 30.2 |
| Comprehensive income attributable to non-controlling interest | — | — |
| Comprehensive income attributable to Myriad Genetics, Inc. shareholders | $ 2.7 | $ 30.2 |

See accompanying notes to condensed consolidated financial statements.

**MYRIAD GENETICS, INC.**
**AND SUBSIDIARIES**
Condensed Consolidated Statements of Cash Flows (Unaudited)
(In millions)

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| **CASH FLOWS FROM OPERATING ACTIVITIES:** | | |
| Net income (loss) | $ (1.2) | $ 30.3 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation and amortization | 9.2 | 6.8 |
| Non-cash interest expense | 0.1 | — |
| Gain on disposition of assets | (0.2) | (0.4) |
| Share-based compensation expense | 7.8 | 8.7 |
| Bad debt expense | 7.2 | 6.0 |
| Deferred income taxes | 3.2 | 11.4 |
| Unrecognized tax benefits | 0.4 | 0.9 |
| Changes in assets and liabilities: | | |
| Prepaid expenses | 7.8 | 7.0 |
| Trade accounts receivable | (5.9) | (3.6) |
| Other receivables | (1.8) | 0.2 |
| Inventory | (13.0) | (9.2) |
| Prepaid taxes | (1.0) | (17.2) |
| Accounts payable | (5.0) | (5.3) |
| Accrued liabilities | (9.5) | (5.7) |
| Deferred revenue | (1.0) | (0.1) |
| Net cash provided by (used in) operating activities | (2.9) | 29.8 |
| **CASH FLOWS FROM INVESTING ACTIVITIES** | | |
| Capital expenditures | (1.5) | (1.0) |
| Acquisitions, net of cash acquired | (213.0) | — |
| Purchases of marketable investment securities | (32.2) | (21.8) |
| Proceeds from maturities and sales of marketable investment securities | 88.7 | 31.8 |
| Net cash provided by (used in) investing activities | (158.0) | 9.0 |
| **CASH FLOWS FROM FINANCING ACTIVITIES:** | | |
| Net proceeds (payments) for common stock issued under share-based compensation plans | (1.9) | 22.8 |
| Net proceeds from issuance of debt | 199.0 | — |
| Repurchase and retirement of common stock | (21.3) | (38.0) |
| Net cash provided by (used in) financing activities | 175.8 | (15.2) |
| Effect of foreign exchange rates on cash and cash equivalents | 3.5 | (0.3) |
| Net increase in cash and cash equivalents | 18.4 | 23.3 |
| Cash and cash equivalents at beginning of the period | 68.5 | 64.1 |
| Cash and cash equivalents at end of the period | $ 86.9 | $ 87.4 |

See accompanying notes to condensed consolidated financial statements.

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**
**(Dollars and shares in millions, except per share data)**

## (1) BASIS OF PRESENTATION

The accompanying condensed consolidated financial statements have been prepared by Myriad Genetics, Inc. (the "Company" or "Myriad") in accordance with U.S. generally accepted accounting principles ("GAAP") for interim financial information and pursuant to the applicable rules and regulations of the Securities and Exchange Commission ("SEC"). The condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. In the opinion of management, the accompanying financial statements contain all adjustments (consisting of normal and recurring accruals) necessary to present fairly all financial statements in accordance with GAAP. The condensed consolidated financial statements herein should be read in conjunction with the Company's audited consolidated financial statements and notes thereto for the fiscal year ended June 30, 2016, included in the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2016. Operating results for the three months ended September 30, 2016 may not necessarily be indicative of results to be expected for any other interim period or for the full year.

The consolidated financial statements include the accounts of the Company's majority-owned subsidiary, Assurex Canada. Assurex Canada, Ltd. is 85% owned by Assurex Health, Inc. and 15% owned by the Centre for Addiction and Mental Health ("CAMH"). Assurex Canada, Ltd. is a consolidated subsidiary of Assurex Health, Inc. The value of the non-controlling interest represents the portion of Assurex Canada Ltd.'s profit or loss and net assets that is not held by Assurex Health, Inc. The Company attributes comprehensive income or loss of the subsidiary between the Company and the non-controlling interest based on the respective ownership interest.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

### New Accounting Pronouncements

In February 2016, the FASB issued Accounting Standards Update 2016-02, Leases ("ASU 2016-02"). ASU 2016-02 amends the existing accounting standards for lease accounting, including requiring lessees to recognize most leases on their balance sheets and making targeted changes to lessor accounting. ASU 2016-02 will be effective beginning in the first quarter of 2019. Early adoption of ASU 2016-02 is permitted. ASU 2016-02 requires a modified retrospective transition approach for all leases existing at, or entered into after, the date of initial application, with an option to use certain transition relief. The Company's management is currently evaluating the impact of adopting ASU 2016-02 on the Company's consolidated financial statements.

In May 2014, the Financial Accounting Standards Board issued ASU No. 2014-09, "Revenue from Contracts with Customers." Under the new standard, revenue is recognized at the time a good or service is transferred to a customer for the amount of consideration received for that specific good or service. In July 2015, the FASB voted to defer the effective date by one year to December 15, 2017 for interim and annual reporting periods beginning after that date. Early adoption is permitted for interim and annual periods beginning after the original effective date of December 15, 2016. Companies may use either a full retrospective or a modified retrospective approach to adopt the standard. We are currently evaluating the impact the adoption of this standard will have on our consolidated financial statements.

## (2) ACQUISITIONS

***Assurex***

On August 31, 2016, the Company completed the acquisition of Assurex Health, Inc. ("Assurex"), pursuant to the Agreement and Plan of Merger (as amended, the "Merger Agreement"), dated August 3, 2016. Pursuant to the terms of the Merger Agreement, Merger Subsidiary was merged with and into Assurex, with Assurex continuing as the surviving corporation, a wholly owned subsidiary of Myriad ,(the "Merger"). We acquired Assurex for total consideration of $348.5, including a cash payment of $213.0, and two potential performance-based milestones totaling $185.0 with a fair value of $130.0. The fair value of the performance-based milestones was determined by using the Monte Carlo method.

Of the cash consideration, $19.1 was deposited into an escrow account to fund (i) any post-closing adjustments payable to Myriad based upon differences between the estimated working capital and the actual working capital of Assurex at closing, and (ii) any indemnification claims made by Myriad against Assurex within 18 months following closing.

Total consideration transferred was allocated to tangible assets acquired and liabilities assumed based on their fair values at the acquisition date as set forth below. We believe the acquisition establishes the foundation for our neuroscience business and leverages our existing preventative care business unit with the addition of a product, GeneSight, which has growth potential. These factors contributed to consideration transferred in excess of the fair value of Assurex's net tangible and intangible assets acquired, resulting in the Company recording $116.3 in goodwill in connection with the transaction.

Management estimated the fair value of tangible and intangible assets and liabilities in accordance with the applicable accounting guidance for business combinations and utilized the services of third-party valuation consultants. The preliminary allocation of the consideration transferred is based on a preliminary valuation and is subject to potential adjustments. Balances subject to adjustment primarily include accounts receivable, the valuations of acquired assets (tangible and intangible), liabilities and the fair value of equipment, non-controlling interest, as well as tax-related matters, including tax basis of acquired assets and liabilities in a foreign jurisdiction. During the measurement period, the Company may record adjustments to the provisional amounts recognized in the Company's initial accounting for the acquisition. The Company expects the allocation of the consideration transferred to be final within the measurement period (up to one year from the acquisition date).

| | Estimated Fair Value |
|---|---|
| Current assets | $ 18.2 |
| Intangible assets | 298.8 |
| Equipment | 0.3 |
| Goodwill | 116.3 |
| Current liabilities | (18.6) |
| Deferred tax liability | (66.5) |
| Total fair value purchase price | $ 348.5 |
| Less: Contingent consideration | (130.0) |
| Less: Cash acquired | (5.5) |
| Total cash consideration transferred | $ 213.0 |

*Identifiable Intangible Assets*

The Company acquired intangible assets that consisted of developed technology which had an estimated fair value of $256.5, a database with an estimated fair value of $39.1 and internally developed software with an estimated fair value of $3.2. The fair value of the developed technology was determined using a probability-weighted income approach that discounts expected future cash flows to present value. The fair value of the database was determined using a combination of the lost profits and replacement cost methods. The fair value of the internally developed software was determined to be the same as the book value at the time of the acquisition. The estimated net cash flows were discounted using a discount rate of 16% which is based on the estimated internal rate of return for the acquisition and represents the rate that market participants might use to value the intangible assets. The projected cash flows were based on key assumptions such as: estimates of revenues and operating profits; the time and resources need to recreate databases and product and commercial development and approval; the life of the commercialized product; and associated risks related to viability and product alternatives. The Company will amortize the intangible assets on a straight-line basis over their estimated useful lives of 17 years for the developed technology, 5 years for the database and 3 years for the internally developed software. This amortization is not deductible for income tax purposes.

*Goodwill*

The $116.3 of goodwill represents the excess of consideration transferred over the fair value of assets acquired and liabilities assumed and is attributable to the benefits expected from combining the Company's research and commercial operations with Assurex's. This goodwill is not deductible for income tax purposes.

*Pro Forma Information*

The unaudited pro-forma results presented below include the effects of the Assurex acquisition as if it had been consummated as of July 1, 2015, with adjustments to give effect to pro forma events that are directly attributable to the acquisition which includes adjustments related to the amortization of acquired intangible assets, interest income and expense, stock-based compensation expense, and depreciation. The unaudited pro forma results do not reflect any operating efficiency or potential cost savings which may result from the consolidation of Assurex. Accordingly, these unaudited pro forma results are presented for informational purposes only and are not necessarily indicative of what the actual results of operation of the combined company would have been if the acquisition had occurred at the beginning of the period presented nor are they indicative of future results of operations and are not necessarily indicative of results that might have been achieved had the acquisition been consummated as of July 1, 2015.

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Revenue | $188.9 | $ 194.5 |
| Income (loss) from operations | (0.8) | 32.9 |
| Net income (loss) | (19.2) | 19.5 |
| Net income (loss) per share, basic | $ (0.28) | $ 0.28 |
| Net income (loss) per share, diluted | $ (0.28) | $ 0.27 |

To complete the purchase transaction, we incurred approximately $5.0 million of acquisition costs, which were recorded as selling, general and administrative expenses. For the three months ended September 30, 2016, Assurex contributed approximately $7.2 of revenue. For the three months ended September 30, 2016 operating expenses related to Assurex were approximately $15.1, of which $1.9 related to amortization of intangible asset.

***Sividon***

On May 31, 2016 the Company completed the acquisition of Sividon Diagnostics GmbH ("Sividon"), a leading breast cancer prognostic company with cash paid and total cash consideration transferred of $39.0 upfront and the potential for €15.0 ($16.8 converted at the September 30, 2016 period end exchange rate) in additional performance-based milestones.

Total consideration transferred was allocated to tangible assets acquired and liabilities assumed based on their fair values at the acquisition date as set forth below. We believe the acquisition brings us the best-in-class breast cancer prognostic test and strengthens our market leading oncology portfolio of high value personalized medicine products which can be expanded internationally as well as brought to the US market. These factors contributed to consideration transferred in excess of the fair value of Sividon's net tangible and intangible assets acquired, resulting in the Company recording goodwill in connection with the transaction. The goodwill related to the purchase is not tax deductible.

Management estimated the fair value of tangible and intangible assets and liabilities in accordance with the applicable accounting guidance for business combinations and utilized the services of third-party valuation consultants. The preliminary allocation of the consideration transferred is based on a preliminary valuation and is subject to potential adjustments. Balances subject to adjustment primarily include the valuations of acquired assets (tangible and intangible), liabilities and the fair value of equipment, as well as tax-related matters, including tax basis of acquired assets and liabilities in the foreign jurisdiction. During the measurement period, the Company may record adjustments to the provisional amounts recognized in the Company's initial accounting for the acquisition. The Company expects the allocation of the consideration transferred to be final within the measurement period (up to one year from the acquisition date). Based upon updated fair value calculations as of the purchase date there was a decrease in contingent consideration of $0.4 and intangibles of $0.4 which increased goodwill by $0.8.

| | Estimated Fair Value |
|---|---|
| Current assets | $ 2.7 |
| Intangible assets | 45.4 |
| Equipment | 0.3 |
| Goodwill | 18.9 |
| Current liabilities | (15.4) |
| Total fair value purchase price | $ 51.9 |
| Less: Contingent consideration | (10.9) |
| Less: Cash acquired | (2.0) |
| Total cash consideration transferred | $ 39.0 |

The acquisition of Sividon has been deemed insignificant in relation to the consolidated financials. As such, proforma financial information will not be provided.

## (3) MARKETABLE INVESTMENT SECURITIES

The Company has classified its marketable investment securities as available-for-sale securities. These securities are carried at estimated fair value with unrealized holding gains and losses, net of the related tax effect, included in accumulated other comprehensive loss in stockholders' equity until realized. Gains and losses on investment security transactions are reported on the specific-identification method. Dividend and interest income are recognized when earned. The amortized cost, gross unrealized holding gains, gross unrealized holding losses, and fair value for available-for-sale securities by major security type and class of security at September 30, 2016 and June 30, 2016 were as follows:

| | Amortized cost | Gross unrealized holding gains | Gross unrealized holding losses | Estimated fair value |
|---|---|---|---|---|
| At September 30, 2016: | | | | |
| Cash and cash equivalents: | | | | |
| Cash | $ 61.1 | $ — | $ — | $ 61.1 |
| Cash equivalents | 25.8 | — | — | 25.8 |
| Total cash and cash equivalents | 86.9 | — | — | 86.9 |
| Available-for-sale: | | | | |
| Corporate bonds and notes | 45.4 | 0.1 | — | 45.5 |
| Municipal bonds | 52.2 | 0.1 | — | 52.3 |
| Federal agency issues | 12.6 | — | — | 12.6 |
| US government securities | 3.3 | — | — | 3.3 |
| Total | $ 200.4 | $ 0.2 | $ — | $ 200.6 |

| | Amortized cost | Gross unrealized holding gains | Gross unrealized holding losses | Estimated fair value |
|---|---|---|---|---|
| At June 30, 2016: | | | | |
| Cash and cash equivalents: | | | | |
| Cash | $ 66.1 | $ — | $ — | $ 66.1 |
| Cash equivalents | 2.4 | — | — | 2.4 |
| Total cash and cash equivalents | 68.5 | — | — | 68.5 |
| Available-for-sale: | | | | |
| Corporate bonds and notes | 50.8 | 0.2 | — | 51.0 |
| Municipal bonds | 85.4 | 0.2 | — | 85.6 |
| Federal agency issues | 25.5 | — | — | 25.5 |
| US government securities | 8.2 | 0.1 | — | 8.3 |
| Total | $ 238.4 | $ 0.5 | $ — | $ 238.9 |

Cash, cash equivalents, and maturities of debt securities classified as available-for-sale securities are as follows at September 30, 2016:

| | Amortized cost | Estimated fair value |
|---|---|---|
| Cash | $ 61.1 | $ 61.1 |
| Cash equivalents | 25.8 | 25.8 |
| Available-for-sale: | | |
| Due within one year | 61.5 | 61.5 |
| Due after one year through five years | 52.0 | 52.2 |
| Due after five years | — | — |
| Total | $ 200.4 | $ 200.6 |

## (4) PROPERTY, PLANT AND EQUIPMENT, NET

| | September 30, 2016 | June 30, 2016 |
|---|---|---|
| Land | $ 2.3 | $ 2.3 |
| Buildings and improvements | 17.4 | 17.3 |
| Leasehold improvements | 20.0 | 18.7 |
| Equipment | 103.6 | 103.4 |
| | 143.3 | 141.7 |
| Less accumulated depreciation | (86.5) | (83.4) |
| Property, plant and equipment, net | $ 56.8 | $ 58.3 |

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Depreciation expense | 3.7 | 3.6 |

## (5) GOODWILL AND INTANGIBLE ASSETS

***Goodwill***

The Company has recorded goodwill of $312.8 from the acquisitions of Assurex that was completed on August 31, 2016, Sividon that was completed on May 31, 2016, the Clinic that was completed on February 27, 2015, Crescendo Bioscience, Inc. that was completed on February 28, 2014 and Rules-Based Medicine, Inc. that was completed on May 31, 2011. Of this goodwill, $247.3 relates to the Company's diagnostic segment and $65.5 relates to the other segment. The following summarizes changes to the goodwill balance for the three months ended September 30, 2016:

| | Carrying amount |
|---|---|
| Beginning balance July 1, 2016 | $ 195.3 |
| Acquisitions (see note 2) | 116.3 |
| Adjustments to prior acquisitions (see note 2) | 0.8 |
| Translation adjustments | 0.4 |
| Ending balance September 30, 2016 | $ 312.8 |

***Intangible Assets***

Intangible assets primarily consist of amortizable assets of purchased licenses and technologies, customer relationships, and trade names as well as non-amortizable intangible assets of in-process technologies and research and development. The following summarizes the amounts reported as intangible assets:

| | Gross Carrying Amount | Accumulated Amortization | Net |
|---|---|---|---|
| At September 30, 2016: | | | |
| Purchased licenses and technologies | $ 528.1 | $ (34.1) | $494.0 |
| Customer relationships | 4.7 | (2.5) | 2.2 |
| Trademarks | 3.0 | (0.7) | 2.3 |
| Total amortized intangible assets | 535.8 | (37.3) | 498.5 |
| In-process research and development | 22.7 | — | 22.7 |
| Total unamortized intangible assets | 22.7 | — | 22.7 |
| Total intangible assets | $ 558.5 | $ (37.3) | $521.2 |

| | Gross Carrying Amount | Accumulated Amortization | Net |
|---|---|---|---|
| At June 30, 2016: | | | |
| Purchased licenses and technologies | $ 228.7 | $ (28.5) | $200.2 |
| Customer relationships | 4.7 | (2.4) | 2.3 |
| Trademarks | 3.0 | (0.6) | 2.4 |
| Total amortized intangible assets | 236.4 | (31.5) | 204.9 |
| In-process research and development | 22.6 | — | 22.6 |
| Total unamortized intangible assets | 22.6 | — | 22.6 |
| Total intangible assets | $ 259.0 | $ (31.5) | $227.5 |

The Company recorded amortization expense during the respective periods for these intangible assets as follows:

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Amortization of intangible assets | 5.5 | 3.2 |

## (6) COST BASIS INVESTMENT

As of September 30, 2016, the Company had a $5.0 investment in RainDance Technologies, Inc., which has been recorded under the cost method as an “Other Asset” on the Company’s condensed consolidated balance sheet. There were no events or circumstances that indicated that impairment exists; therefore, the Company recorded no impairment in the investment for the three months ended September 30, 2016.

## (7) ACCRUED LIABILITIES

| | September 30, 2016 | June 30, 2016 |
|---|---|---|
| Employee compensation and benefits | $ 37.0 | $ 37.3 |
| Accrued taxes payable | 3.2 | 2.8 |
| Other | 14.6 | 9.4 |
| Total accrued liabilities | $ 54.8 | $ 49.5 |

## (8) SHORT-TERM DEBT

On August 31, 2016, Myriad entered into a Credit Agreement. Myriad borrowed term loans in an aggregate principal amount of $200.0 (the “Term Loan”). The Term Loan matures on August 31, 2017 (the “Maturity Date”). There shall be no scheduled principal payments of the Term Loan prior to the Maturity Date.

The proceeds of the Term Loan was used to (i) finance the acquisition of Assurex, (ii) refinance certain existing indebtedness of Assurex and its subsidiaries, (iii) pay fees, commissions, transactions costs and expenses incurred in connection with the foregoing, and (iv) for working capital and other general corporate purposes.

The Credit Agreement contains customary loan terms, interest rates, and representations and warranties and usual and customary affirmative and negative covenants, in each case, subject to customary limitations, exceptions and exclusions. The Credit Agreement also contains certain customary events of default.

Covenants in the Credit Agreement, which go into effect quarter ending December 31, 2016, impose operating and financial restrictions on us. These restrictions prohibit or limit, among other things, our incurrence of additional indebtedness, the creation of certain types of liens, mergers or consolidations, certain change in control transactions, asset sales, payment of dividends or other distributions to shareholders, investments, transactions with affiliates, or sales to users or partnerships with companies in certain countries. We must maintain a specified leverage and interest ratios measured as of the end of each quarter as a financial covenant under the Credit Agreement.

Under the Credit Agreement, a change in control in our Company, which means that a shareholder or a group of shareholders is or becomes the beneficial owner, directly or indirectly, of more than 35% of the total voting power of the voting stock of the Company would require mandatory prepayment of the outstanding debt.

The Agent and its affiliates have various relationships with Myriad and its subsidiaries involving the provision of financial services, such as investment banking, commercial banking, advisory, paying agent services and escrow services for which they receive customary fees and may do so in the future.

| | September 30, 2016 | June 30, 2016 |
|---|---|---|
| Short-term debt | $ 200.0 | $ — |
| Short-term debt discount | (0.8) | — |
| Net short-term debt | $ 199.2 | $ — |

## (9) OTHER LONG TERM LIABILITIES

| | September 30, 2016 | June 30, 2016 |
|---|---|---|
| Assurex purchase earn out | $ 130.0 | $ — |
| Sividon purchase earn out | 11.5 | 10.4 |
| Pension obligation | 6.1 | 5.9 |
| Other | 1.1 | 1.9 |
| Total other long term liabilities | $ 148.7 | $ 18.2 |

The Company has two non-contributory defined benefit pension plans for its current and former Clinic employees. Participation in the plans excludes those employees hired after 2002. As of September 30, 2016 the fair value of the plan assets were approximately $0.1 resulting in a net pension liability of $6.1.

## (10) PREFERRED AND COMMON STOCKHOLDER'S EQUITY

The Company is authorized to issue up to 5.0 shares of preferred stock, par value $0.01 per share. There were no preferred shares outstanding at September 30, 2016.

The Company is authorized to issue up to 150.0 shares of common stock, par value $0.01 per share. There were 68.4 shares issued and outstanding at September 30, 2016.

*Common shares issued and outstanding*

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Common stock issued and outstanding at July 1 | 69.1 | 68.9 |
| Common stock issued upon exercise of options and employee stock plans | 0.3 | 1.6 |
| Repurchase and retirement of common stock | (1.0) | (1.1) |
| Common stock issued and outstanding at September 30 | 68.4 | 69.4 |

Basic earnings per share is computed based on the weighted-average number of shares of common stock outstanding. Diluted earnings per share is computed based on the weighted-average number of shares of common stock, including the dilutive effect of common stock equivalents, outstanding.

The following is a reconciliation of the denominators of the basic and diluted earnings per share ("EPS") computations:

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| **Denominator:** | | |
| Weighted-average shares outstanding used to compute basic EPS | 68.8 | 68.7 |
| Effect of dilutive shares | — | 3.4 |
| Weighted-average shares outstanding and dilutive securities used to compute diluted EPS | 68.8 | 72.1 |

Certain outstanding options and restricted stock units ("RSUs") were excluded from the computation of diluted earnings per share because the effect would have been anti-dilutive. These potential dilutive common shares, which may be dilutive to future diluted earnings per share, are as follows:

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Anti-dilutive options and RSU's excluded from EPS computation | 9.6 | 0.1 |

*Stock Repurchase Program*

In June 2016, the Company's Board of Directors authorized an eighth share repurchase program of $200.0 of the Company's outstanding common stock. The Company plans to repurchase its common stock from time to time or on an accelerated basis through open market transactions or privately negotiated transactions as determined by the Company's management. The amount and timing of stock repurchases under the program will depend on business and market conditions, stock price, trading restrictions, acquisition activity and other factors. As of September 30, 2016, the Company has $171.0 remaining on its current share repurchase authorization.

The Company uses the par value method of accounting for its stock repurchases. As a result of the stock repurchases, the Company reduced common stock and additional paid-in capital and recorded charges to accumulated deficit. The shares retired, aggregate common stock and additional paid-in capital reductions, and related charges to accumulated deficit for the repurchases for periods ended September 30, 2016 and 2015 were as follows:

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Shares purchased and retired | 1.0 | 1.1 |
| Common stock and additional paid-in-capital reductions | $ 9.1 | $ 9.5 |
| Charges to retained earnings | $ 12.2 | $ 28.5 |

## (11) INCOME TAXES

In order to determine the Company's quarterly provision for income taxes, the Company used an estimated annual effective tax rate that is based on expected annual income and statutory tax rates in the various jurisdictions in which the Company operates. Certain significant or unusual items are separately recognized in the quarter during which they occur and can be a source of variability in the effective tax rate from quarter to quarter.

Income tax expense for the three months ended September 30, 2016 was $5.2, or approximately 130% of pre-tax income, compared to $13.2, or approximately 30% of pre-tax income, for the three months ended September 30, 2015. Income tax expense for the three months ended September 30, 2016 is based on the Company's estimated annual effective tax rate for the full fiscal year ending June 30, 2017, adjusted by discrete items recognized during the period. For the three months ended September 30, 2016, the Company's recognized effective tax rate differs from the U.S. federal statutory rate of 35% primarily due to the effect of state income taxes, penalties and interest, and the adoption of ASU 2016-09 ("ASU2016-09"), Improvements to Employee Share-Based Payment Accounting and other benefits realized from the differences related to the earlier recognition of the tax effect of equity compensation expense from incentive stock options and the deduction realized when those options are disqualified upon exercise and sale.

The Company files U.S., foreign and state income tax returns in jurisdictions with various statutes of limitations. The Company is currently under audit by the IRS for the fiscal year ended June 30, 2014, the State of New Jersey for the fiscal years June 30, 2007 through 2013, the State of New York for the fiscal years June 30, 2014 through 2015, and the State of California for the fiscal years June 30, 2013 through 2014. Annual and interim tax provisions include amounts considered necessary to pay assessments that may result from examination of prior year tax returns; however, the amount ultimately paid upon resolution of issues may differ materially from the amount accrued.

The FASB issued ASU 2016-09 on March 30, 2016, in an effort to simplify the accounting for income taxes surrounding excess tax benefits. The Company elected early adoption in the fourth quarter of the June 30, 2016 fiscal year. The guidance indicates that the provision is to be adopted prospectively and that any adjustment for the period ending June 30, 2016 must be reflected as of the beginning of the June 30, 2016 fiscal year. Accordingly, adjustments related of the application of ASU 2016-09 in any period following the June 30, 2016 fiscal year are reflected as required in both the effective tax rate, and the deferred tax asset and liabilities. The Company has made an entity-wide accounting policy election to continue to estimate the number of awards that are expected to vest and adjust the estimate when it is likely to change.

## (12) SHARE-BASED COMPENSATION

The Company maintains a share-based compensation plan, the 2010 Employee, Director and Consultant Equity Incentive Plan, as amended (the "2010 Plan"), that has been approved by the Company's shareholders. The 2010 Plan allows the Company, under the direction of the Compensation Committee of the Board of Directors, to make grants of stock options, restricted and unrestricted stock awards and other stock-based awards to employees, consultants and directors. On December 3, 2015, the shareholders approved an amendment to the 2010 Plan to add 1.6 to the number of shares of common stock available for grant. At September 30, 2016, 0.4 shares of common stock were available for issuance. If an option or RSU issued or awarded under the 2010 Plan is cancelled or expires without the issuance of shares of common stock, the unissued or reacquired shares, which were subject to the option or RSU, shall again be available for issuance pursuant to the 2010 Plan. In addition, as of September 30, 2016, the Company may grant up to 2.4 additional shares of common stock under the 2010 Plan if options previously granted under the Company's terminated 2003 Employee, Director and Consultant Option Plan are cancelled or expire without the issuance of shares of common stock by the Company.

The number of shares, terms, and vesting periods are determined by the Company's Board of Directors or a committee thereof on an option-by-option basis. Options generally vest ratably over service periods of four years. Options granted after December 5, 2012 expire eight years from the date of grant, and options granted prior to that date generally expire ten years from the date of grant. In September 2014, the Company began issuing restricted stock units ("RSUs") in lieu of stock options. RSUs generally vest ratably over four years on the anniversary date of the grant to all employees. The number of RSUs awarded to certain executive officers may be reduced if certain additional performance metrics are not met. Options and restricted stock units granted to our non-employee directors vest in full upon the earlier of (i) one full year of service on the Board following date of grant or (ii) the date of the next annual meeting of stockholders.

*Stock Options*

A summary of the stock option activity under the Company's plans for the three months ended September 30, 2016 is as follows:

| | Number of shares | Weighted average exercise price |
|---|---|---|
| Options outstanding at June 30, 2016 | 8.2 | $ 24.52 |
| Options granted | — | $ — |
| Less: | | |
| Options exercised | (0.1) | $ 13.38 |
| Options canceled or expired | — | $ — |
| Options outstanding at September 30, 2016 | 8.1 | $ 24.59 |
| Options exercisable at September 30, 2016 | 7.6 | $ 24.45 |

As of September 30, 2016, there was $4.5 of total unrecognized share-based compensation expense related to stock options that will be recognized over a weighted-average period of 0.94 years.

*Restricted Stock Units*

A summary of the RSU activity under the Company's plans for the three months ended September 30, 2016 is as follows:

| | Number of shares | Weighted average grant date fair value |
|---|---|---|
| RSUs outstanding at June 30, 2016 | 1.4 | $ 38.76 |
| RSUs granted | 1.0 | $ 21.93 |
| Less: | | |
| RSUs vested | (0.4) | $ 20.78 |
| RSUs canceled | — | $ — |
| RSUs outstanding at September 30, 2016 | 2.0 | $ 33.62 |

As of September 30, 2016, there was $44.1 of total unrecognized share-based compensation expense related to RSUs that will be recognized over a weighted-average period of 2.79 years. This unrecognized compensation expense is equal to the fair value of RSUs expected to vest.

*Employee Stock Purchase Plan*

The Company also has an Employee Stock Purchase Plan that was approved by shareholders in 2012 (the "2012 Purchase Plan"), under which 2.0 shares of common stock have been authorized. Shares are issued under the 2012 Purchase Plan twice yearly at the end of each offering period. As of September 30, 2016, approximately 0.7 shares of common stock have been issued under the 2012 Purchase Plan.

*Share-Based Compensation Expense*

Share-based compensation expense recognized and included in the condensed consolidated statements of income and comprehensive income was allocated as follows:

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Cost of molecular diagnostic testing | $ 0.2 | $ 0.2 |
| Cost of pharmaceutical and clinical services | 0.1 | 0.1 |
| Research and development expense | 1.6 | 1.6 |
| Selling, general, and administrative expense | 5.9 | 6.8 |
| Total share-based compensation expense | $ 7.8 | $ 8.7 |

## (13) FAIR VALUE MEASUREMENTS

The fair value of the Company's financial instruments reflects the amounts that the Company estimates it will receive in connection with the sale of an asset or pay in connection with the transfer of a liability in an orderly transaction between market participants at the measurement date (exit price). The fair value of contingent consideration related to the Sivdon and Assurex acquisitions were categorized as a level 3 liability, as the measurement of the earn-out amount was based primarily on significant inputs not observable in the market. For more information about the Sividon and Assurex acquisitions, see Note 2 "Acquisitions ". The fair value hierarchy prioritizes the use of inputs used in valuation techniques into the following three levels:

Level 1 — quoted prices in active markets for identical assets and liabilities.

Level 2 — observable inputs other than quoted prices in active markets for identical assets and liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. Some of the Company's marketable securities primarily utilize broker quotes in a non-active market for valuation of these securities.

Level 3 — unobservable inputs.

All of the Company's financial instruments are valued using quoted prices in active markets or based on other observable inputs. For Level 2 securities, the Company uses a third party pricing service which provides documentation on an ongoing basis that includes, among other things, pricing information with respect to reference data, methodology, inputs summarized by asset class, pricing application and corroborative information. For Level 3, we reassess the fair value of expected contingent consideration and the corresponding liability periodically using the Monte Carlo Method, which is consistent with the initial measurement of expected earn out liability. This fair value measurement is considered a Level 3 measurement because we estimate projections during the earn out period utilizing various potential pay-out scenarios. Probabilities were applied to each potential scenario and the resulting values were discounted using a rate that considers weighted average cost of capital as well as a specific risk premium associated with the riskiness of the earn out itself, the related projections, and the overall business. The contingent earn out liability is classified as a component of other long-term liabilities in our consolidated balance sheets. Changes to the estimated liabilities are reflected in selling, general and administrative expenses in our consolidated income statements. The Company reviews, tests and validates this information. The following table sets forth the fair value of the financial assets that the Company re-measures on a regular basis:

| | Level 1 | Level 2 | Level 3 | Total |
|---|---|---|---|---|
| September 30, 2016 | | | | |
| Money market funds (a) | $ 25.8 | $ — | $ — | $ 25.8 |
| Corporate bonds and notes | — | 45.5 | — | 45.5 |
| Municipal bonds | — | 52.3 | — | 52.3 |
| Federal agency issues | — | 12.6 | — | 12.6 |
| US government securities | — | 3.3 | — | 3.3 |
| Contingent consideration | — | — | (141.5) | (141.5) |
| Total | $ 25.8 | $113.7 | $(141.5) | $ (2.0) |

(a) Money market funds are primarily comprised of exchange traded funds and accrued interest

| | Level 1 | Level 2 | Level 3 | Total |
|---|---|---|---|---|
| June 30, 2016 | | | | |
| Money market funds (a) | $ 2.4 | $ — | $ — | $ 2.4 |
| Corporate bonds and notes | — | 51.0 | — | 51.0 |
| Municipal bonds | — | 85.6 | — | 85.6 |
| Federal agency issues | — | 25.5 | — | 25.5 |
| US government securities | — | 8.3 | — | 8.3 |
| Contingent consideration | — | — | (10.4) | (10.4) |
| Total | $ 2.4 | $170.4 | $(10.4) | $162.4 |

(a) Money market funds are primarily comprised of exchange traded funds and accrued interest

The following table reconciles the change in the fair value of the contingent consideration during the periods presented:

| | Carrying amount |
|---|---|
| Balance June 30, 2016 | $ 10.4 |
| Purchases (see note 2) | 130.0 |
| Current period adjustments to purchase accounting | 0.5 |
| Expense recognized in the income statement | 0.5 |
| Translation adjustments recognized in other comprehensive income | 0.1 |
| Ending balance September 30, 2016 | $ 141.5 |

## (14) COMMITMENTS AND CONTINGENCIES

The Company is subject to various claims and legal proceedings covering matters that arise in the ordinary course of its business activities. As of September 30, 2016, the management of the Company believes any liability that may ultimately result from the resolution of these matters will not have a material adverse effect on the Company's consolidated financial position, operating results, or cash flows.

## (15) EMPLOYEE DEFERRED SAVINGS PLAN

The Company has a deferred savings plan which qualifies under Section 401(k) of the Internal Revenue Code. Substantially all of the Company's U.S. employees are covered by the plan. The Company makes matching contributions of 50% of each employee's contribution with the employer's contribution not to exceed 4% of the employee's compensation. The Company's recorded contributions to the plan as follows:

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Deferred savings plan contributions | $ 1.6 | $ 1.5 |

## (16) SEGMENT AND RELATED INFORMATION

The Company's business is aligned with how the Chief Operating Decision Maker ("CODM") reviews performance and makes decisions in managing the Company. The business units have been aggregated into two reportable segments: (i) diagnostics and (ii) other. The diagnostics segment provides testing and collaborative development of testing that is designed to assess an individual's risk for developing disease later in life, identify a patient's likelihood of responding to drug therapy and guide a patient's dosing to ensure optimal treatment, or assess a patient's risk of disease progression and disease recurrence. The other segment provides testing products and services to the pharmaceutical, biotechnology and medical research industries, research and development, and clinical services for patients, and includes corporate services such as finance, human resources, legal and information technology.

Segment revenue and operating income (loss) were as follows during the periods presented:

| | Diagnostics | Other | Total |
|---|---|---|---|
| Three months ended September 30, 2016 | | | |
| Revenues | $ 165.1 | $ 12.4 | $177.5 |
| Depreciation and amortization | 7.8 | 1.4 | 9.2 |
| Segment operating income (loss) | 30.6 | (24.4) | 6.2 |
| Three months ended September 30, 2015 | | | |
| Revenues | $ 171.9 | $ 11.6 | $183.5 |
| Depreciation and amortization | 5.5 | 1.3 | 6.8 |
| Segment operating income (loss) | 62.3 | (19.0) | 43.3 |

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Total operating income for reportable segments | $ 6.2 | $ 43.3 |
| Unallocated amounts: | | |
| Interest income | 0.3 | 0.1 |
| Other | (2.5) | 0.1 |
| Income from operations before income taxes | 4.0 | 43.5 |
| Income tax provision | 5.2 | 13.2 |
| Net income | $ (1.2) | $ 30.3 |

## (17) SUPPLEMENTAL CASH FLOW INFORMATION

| | Three months ended September 30, | |
|---|---|---|
| | 2016 | 2015 |
| Cash paid during the period for income taxes | $ 3.3 | $ 18.4 |
| Non-cash investing and financing activities: | | |
| Fair value adjustment on marketable investment securities recorded to other stockholder's equity | (0.4) | 0.1 |

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### General

We are a leading personalized medicine company dedicated to being a trusted advisor transforming patient lives through pioneering molecular diagnostics. Through our proprietary technologies, we believe we are positioned to identify important disease genes, the proteins they produce, and the biological pathways in which they are involved to better understand the genetic basis of human disease and the role that genes and their related proteins may play in the disease process. We believe that identifying biomarkers (DNA, RNA and proteins) will enable us to develop novel molecular diagnostic tests that can provide important information to solve unmet medical needs. During the three months ended September 30, 2016, we reported total revenues of $177.5 million, net loss of $1.2 million with $0.02 loss per share that included income tax expense of $5.2 million.

Our business units have been aligned with how the Chief Operating Decision Maker ("CODM") reviews performance and makes decisions in managing the Company. The business units have been aggregated into two reportable segments: (i) diagnostics and (ii) other. The diagnostics segment provides testing and collaborative development of testing that is designed to assess an individual's risk for developing disease later in life, identify a patient's likelihood of responding to drug therapy and guide a patient's dosing to ensure optimal treatment, or assess a patient's risk of disease progression and disease recurrence. The other segment provides testing products and services to the pharmaceutical, biotechnology and medical research industries, research and development, and clinical services for patients, and includes corporate services such as finance, human resources, legal and information technology.

### Business Highlights

On August 31, 2016, we completed the acquisition of Assurex Health Inc. ("Assurex") which contributed approximately $7.2 million of revenue in the current quarter with a negative impact on diluted earnings per share of $0.07. We believe the acquisition establishes the foundation for our neuroscience business and leverages our existing preventative care business unit with the addition of a neuropsychiatric pharmacogenomic test product, GeneSight, which has growth potential.

On August 31, 2016, we entered into a Credit Agreement pursuant to which, we borrowed term loans in an aggregate principal amount of $200.0 million (the "Term Loan"). The Term Loan matures on August 31, 2017. The proceeds of the Term Loan were used to (i) finance the acquisition of Assurex, (ii) refinance certain existing indebtedness of Assurex and its subsidiaries, (iii) pay fees, commissions, transactions costs and expenses incurred in connection with the foregoing, and (iv) for working capital and other general corporate purposes.

During the quarter we signed preferred provider agreements for hereditary cancer testing with both The U.S. Oncology Network and the Integrated Oncology Network (ION). Combined, these organizations comprise approximately 70 percent of community oncologists in the country, or approximately 4,000 physicians.

### Results of Operations for the Three Months Ended September 30, 2016 and 2015

*Revenue*

| | Three months ended September 30, | | |
|---|---|---|---|
| *(In millions)* | 2016 | 2015 | Change |
| Revenue | $ 177.5 | $ 183.5 | $ (6.0) |

The decrease in revenue is primarily due to the reduction in revenue for hereditary cancer products of $17.4 million due to reduced volumes and reimbursement, which was partially offset by including $7.2 million in GeneSight revenue resulting from the Assurex acquisition. The decrease in revenue was also offset by increases in revenue of $2.1 million from Prolaris and $1.0 million from EndoPredict, respectively.

The following table presents additional detail regarding the composition of our total revenue for the three months ended September 30, 2016 and 2015:

| *(In millions)* | Three months ending September 30, 2016 | 2015 | $ Change | % of Total Revenue 2016 | 2015 |
|---|---|---|---|---|---|
| Molecular diagnostic revenues: | | | | | |
| Hereditary Cancer Testing | $ 139.3 | $ 156.7 | $(17.4) | 78% | 85% |
| VectraDA | 11.6 | 11.4 | 0.2 | 7% | 6% |
| Prolaris | 2.9 | 0.7 | 2.2 | 2% | 0% |
| GeneSight | 7.2 | — | 7.2 | 4% | 0% |
| EndoPredict | 1.7 | 0.8 | 0.9 | 1% | 0% |
| Other | 2.4 | 2.3 | 0.1 | 1% | 1% |
| Total molecular diagnostic revenue | 165.1 | 171.9 | (6.8) | | |
| Pharmaceutical and clinical service revenue | 12.4 | 11.6 | 0.8 | 7% | 6% |
| Total revenue | $ 177.5 | $ 183.5 | $ (6.0) | 100% | 100% |

*Cost of Sales*

| *(In millions)* | Three months ended September 30, 2016 | 2015 | Change |
|---|---|---|---|
| Cost of sales | $ 40.0 | $ 36.5 | $ 3.5 |
| Cost of sales as a % of sales | 22.5% | 19.9% | |

Cost of sales as a percentage of revenue increased from 19.9% to 22.5% during the three months ended September 30, 2016 compared to the same period in the prior year. The increase was primarily driven by product mix with more revenue form lower-margin products including pharmaceutical and clinical services, lower fixed-cost absorption from lower hereditary cancer revenues and reduced reimbursement.

*Research and Development Expenses*

| *(In millions)* | Three months ended September 30, 2016 | 2015 | Change |
|---|---|---|---|
| R&D expense | $ 19.4 | $ 17.2 | $ 2.2 |
| R&D expense as a % of sales | 10.9% | 9.4% | |

Research and development expense for the three months ended September 30, 2016 increased compared to the same period in the prior year primarily driven by a $1.3 million increase in costs related to the inclusion of Assurex and a $1.1 million increase in costs associated with internal development of existing products. This increase was partially offset by a $0.2 million decrease in share based compensation. In general, costs associated with research and development can fluctuate dramatically due to the timing of clinical studies, the staging of products in the pipeline and other factors.

*Selling, General and Administrative Expenses*

| *(In millions)* | Three months ended September 30, 2016 | 2015 | Change |
|---|---|---|---|
| SG&A expense | $ 111.9 | $ 86.5 | $ 25.4 |
| SG&A expense as a % of sales | 63.0% | 47.1% | |

Selling, general and administrative expense increased for the three months ended September 30, 2016 compared to the same period in the prior year primarily due to $8.0 increase due to the inclusion of Assurex, $9.7 million in cost related to acquisition and integration activities for Assurex, $2.4 million increase in sales and marketing efforts for new products, $1.5 million increase in sales commissions and employee benefits and $1.0 million increase in bad debt expense related to reduced collections.

*Other Income (Expense)*

| *(In millions)* | Three months ended September 30, 2016 | 2015 | Change |
|---|---|---|---|
| Other income (expense) | $ (2.2) | $ 0.2 | $ (2.4) |

For the three months ended September 30, 2016 compared to the same period in the prior year, the decrease in other income was primarily driven by a one-time $2.0 indirect tax expense and $0.7 million increase in interest expense.

*Income Tax Expense*

| *(In millions)* | Three months ended September 30, 2016 | 2015 | Change |
|---|---|---|---|
| Income tax expense | $ 5.2 | $ 13.2 | $ (8.0) |
| Effective tax rate | 130.0% | 30.3% | |

Our tax rate is the product of a U.S. federal effective rate of 35% and a blended state income tax rate of approximately 3%. Certain significant or unusual items are separately recognized during the period in which they occur and can be a source of variability in the effective tax rates from period to period. The increase in the effective rate for the three months ended September 30, 2016 as compared to the same period in prior year is due to the early adoption of ASU 2016-09, penalties not deductible for income tax purposes, and fair value adjustments related to acquisition contingent consideration. Differences related to the recognition of the tax effect of equity compensation expense from the disqualification of incentive stock options also impacted the current and prior year effective tax rate.

**Liquidity and Capital Resources**

We believe that our existing capital resources and the cash to be generated from future sales will be sufficient to meet our projected operating requirements, including repayment of the outstanding Term Loan which mature on August 31, 2017, for the foreseeable future. However, our available capital resources may be consumed more rapidly than currently expected and we may need or want to raise additional financing. We may not be able to secure such financing in a timely manner or on favorable terms, if at all. Without additional funds, we may be forced to delay, scale back or eliminate some of our sales and marketing efforts, research and development activities, or other operations and potentially delay development of our diagnostic tests in an effort to provide sufficient funds to continue our operations. If any of these events occurs, our ability to achieve our development and commercialization goals would be adversely affected.

Our capital deployment strategy focuses on use of resources in three key areas: research and development, acquisitions and the repurchase of our common stock. We believe that research and development provides the best return on invested capital. We also allocate capital for acquisitions that support our business strategy and share repurchases based on business and market conditions.

The following table represents the balances of cash, cash equivalents and marketable investment securities:

| *(In millions)* | September 30, 2016 | June 30, 2016 | Change |
|---|---|---|---|
| Cash and cash equivalents | $ 86.9 | $ 68.5 | $ 18.4 |
| Marketable investment securities | 61.5 | 90.5 | (29.0) |
| Long-term marketable investment securities | 52.2 | 79.9 | (27.7) |
| Cash, cash equivalents and marketable investment securities | $ 200.6 | $238.9 | $(38.3) |

For the three months ended September 30, 2016, the decrease in cash, cash equivalents and marketable investment securities was primarily driven by $213.0 million used for the acquisition of Assurex and $21.3 million used for the repurchase and retirement of common stock. These increases were partially offset by $199.0 million in cash received on notes payable.

The following table represents the condensed consolidated cash flow statement:

| *(In millions)* | Three months ended September 30, 2016 | 2015 | Change |
|---|---|---|---|
| Cash flows from operating activities | $ (2.9) | 29.8 | $ (32.7) |
| Cash flows from investing activities | (158.0) | 9.0 | (167.0) |
| Cash flows from financing activities | 175.8 | (15.2) | 191.0 |
| Effect of foreign exchange rates on cash and cash equivalents | 3.5 | (0.3) | 3.8 |
| Net increase in cash and cash equivalents | 18.4 | 23.3 | (4.9) |
| Cash and cash equivalents at the beginning of the year | 68.5 | 64.1 | 4.4 |
| Cash and cash equivalents at the end of the period | $ 86.9 | $ 87.4 | $ (0.5) |

*Cash Flows from Operating Activities*

The decrease in cash flows from operating activities for the three months ended September 30, 2016, compared to the same period in the prior year, was due to the $31.5 million decrease in net income and a $5.7 million decrease in non-cash charges included in net income partially offset by a $4.5 million increase due to changes in assets and liabilities associated with operating activities.

*Cash Flows from Investing Activities*

For the three months ended September 30, 2016, compared to the same period in the prior year, the decrease in cash flows from investing activities was primarily related to the $213.0 million acquisition of Assurex. This was partially offset by a $46.5 increase in cash flows related to marketable investment securities.

*Cash Flows from Financing Activities*

For the three months ended September 30, 2016, compared to the same period in the prior year, the increase in cash flows from financing activities was driven primarily by the $199.0 million of cash from the Term Loan and a $16.7 million reduction in share repurchases. This increase was partially offset by a $24.7 million reduction in proceeds for common stock issued under share-based compensation plans.

*Effects of Inflation*

We do not believe that inflation has had a material impact on our business, sales, or operating results during the periods presented.

*Share Repurchase Program*

In June 2016, our Board of Directors authorized an eighth share repurchase program of $200 million of our outstanding common stock. We plan to repurchase our common stock from time to time or on an accelerated basis through open market transactions or privately negotiated transactions as determined by our management. The amount and timing of stock repurchases under the program will depend on business and market conditions, stock price, trading restrictions, acquisition activity and other factors. As of September 30, 2016, we have $171.0 million remaining on our current share repurchase authorization. See also “Part II, Item 2. Unregistered Sales of Equity Securities and Use of Proceeds – Issuer Purchases of Equity Securities.”

**Critical Accounting Policies**

Critical accounting policies are those policies which are both important to the presentation of a company’s financial condition and results and require management’s most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. No significant changes to our accounting policies took place during the period. For a further discussion of our critical accounting policies, see our Annual Report on Form 10-K for the fiscal year ended June 30, 2016.

**Certain Factors That May Affect Future Results of Operations**

The Securities and Exchange Commission encourages companies to disclose forward-looking information so that investors can better understand a company's future prospects and make informed investment decisions. This Quarterly Report on Form 10-Q contains such "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995.

Words such as "may," "anticipate," "estimate," "expects," "projects," "intends," "plans," "believes," "seek," "could," continue," "likely," "will," "strategy, "goal" and words and terms of similar substance used in connection with any discussion of future operating or financial performance, identify forward-looking statements. All forward-looking statements are management's present expectations of future events and are subject to a number of risks and uncertainties that could cause actual results to differ materially and adversely from those described in the forward-looking statements. These risks include, but are not limited to: the risk that sales and profit margins of our existing molecular diagnostic tests and pharmaceutical and clinical services may decline or will not continue to increase at historical rates; risks related to our ability to transition from our existing product portfolio to our new tests; risks related to changes in the governmental or private insurers' reimbursement levels for our tests or our ability to obtain reimbursement for our new tests at comparable levels to our existing tests; risks related to increased competition and the development of new competing tests and services; the risk that we may be unable to develop or achieve commercial success for additional molecular diagnostic tests and pharmaceutical and clinical services in a timely manner, or at all; the risk that we may not successfully develop new markets for our molecular diagnostic tests and pharmaceutical and clinical services, including our ability to successfully generate revenue outside the United States; the risk that licenses to the technology underlying our molecular diagnostic tests and pharmaceutical and clinical services tests and any future tests are terminated or cannot be maintained on satisfactory terms; risks related to delays or other problems with operating our laboratory testing facilities; risks related to public concern over our genetic testing in general or our tests in particular; risks related to regulatory requirements or enforcement in the United States and foreign countries and changes in the structure of the healthcare system or healthcare payment systems; risks related to our ability to obtain new corporate collaborations or licenses and acquire new technologies or businesses on satisfactory terms, if at all; risks related to our ability to successfully integrate and derive benefits from any technologies or businesses that we license or acquire, including but not limited to our acquisition of Assurex, Sividon and the Clinic; risks related to our projections about the potential market opportunity for our products; the risk that we or our licensors may be unable to protect or that third parties will infringe the proprietary technologies underlying our tests; the risk of patent-infringement claims or challenges to the validity of our patents; risks related to changes in intellectual property laws covering our molecular diagnostic tests and pharmaceutical and clinical services and patents or enforcement in the United States and foreign countries, such as the Supreme Court decision in the lawsuit brought against us by the Association for Molecular Pathology et al; risks of new, changing and competitive technologies and regulations in the United States and internationally; and other factors discussed under the heading "Risk Factors" contained in Item 1A of our Annual report on Form 10-K for the fiscal year ended June 30, 2016, which has been filed with the Securities and Exchange Commission, as well as any updates to those risk factors filed from time to time in our Quarterly Reports on Form 10-Q or Current Reports on Form 8-K.

In light of these assumptions, risks and uncertainties, the results and events discussed in the forward-looking statements contained in this Quarterly Report or in any document incorporated by reference might not occur. Stockholders are cautioned not to place undue reliance on the forward-looking statements, which speak only as of the date of this Quarterly Report. We are not under any obligation, and we expressly disclaim any obligation, to update or alter any forward-looking statements, whether as a result of new information, future events or otherwise. All subsequent forward-looking statements attributable to us or to any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

There have been no material changes in our market risk during the three months ended September 30, 2016 compared to the disclosures in Part II, Item 7A of our Annual Report on Form 10-K for the fiscal year ended June 30, 2016, which is incorporated by reference herein.

**Item 4. Controls and Procedures**

(a) *Evaluation of Disclosure Controls and Procedures*. Our principal executive officer and principal financial officer, after evaluating the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this Quarterly Report on Form 10-Q, have concluded that, based on such evaluation, our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

In designing and evaluating our disclosure controls and procedures, our management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and our management necessarily is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

(b) *Changes in Internal Controls*. There were no changes in our internal control over financial reporting identified in connection with the evaluation of such internal control that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II - Other Information

### Item 1. Legal Proceedings

On September 7, 2016, Esoterix Genetic Laboratories, LLC ("EGL") and The John Hopkins University ("JHU") (collectively "Plaintiffs") filed a complaint against Myriad Genetics, Inc. and Myriad Genetic Laboratories, Inc. (collectively "Myriad") in the United States District Court for the Middle District of North Carolina, Greensboro Division (Civil Action No. 16-cv-1112), alleging that certain laboratory processes utilized by Myriad in conducting certain clinical diagnostic testing services infringe patent claims owned by JHU and exclusively licensed to EGL. The Plaintiffs are seeking a judgment of infringement, injunctive relief, compensatory damages, recovery of costs and legal fees, and other relief. Myriad intends to vigorously defend the claims being asserted.

Other than as set forth above, we are not a party to any legal proceedings that we believe will have a material impact on our business, financial position or results of operations.

### Item 1A. Risk Factors

A discussion of our risk factors can be found in our Annual Report on Form 10-K for fiscal year ended June 30, 2016. The information below includes an amendment to an existing risk factor and an additional risk factor with respect to the restrictive covenants contained in the Credit Agreement. The remaining risk factors included in Annual Report on Form 10-K for fiscal year ended June 30, 2016 remain unchanged and are incorporated herein by reference.

***If we do not continue to generate sufficient revenue from sales of our molecular diagnostic tests and are unable to secure additional funding, we may have to reduce our operations or may default under the Term Loan.***

As of September 30, 2016, we had $200.6 million in cash, cash equivalents and marketable securities. For the months ended September 30, 2016 our consolidated revenues were $177.5 million, and net cash used in operating activities was $2.9 million. To develop and bring new molecular diagnostic tests and companion diagnostic tests to market, we must commit substantial resources to costly and time-consuming research, development testing and clinical testing. In addition, we entered into a Credit Agreement in August 2016, pursuant to which we borrowed a principal amount of $200.0 million ("Term Loan"). This Term Loan is due on August 31, 2017.

While we anticipate that our existing cash, cash equivalents and marketable securities and expected net cash to be generated from sales of our molecular diagnostic tests and pharmaceutical and clinical services will be sufficient to fund our current operations for the foreseeable future, changes could occur that would consume available capital resources more quickly than we currently expect and we may need or want to raise additional financing. If we are unable to secure additional funding, we may be unable to repay our Term Loan when it becomes due, and be required to reduce research and development projects, limit sales and marketing activities, scale back our expansion efforts outside the United States, reduce headcount or potentially even discontinue operations. Our future capital requirements will depend on many factors that are currently unknown to us, including:

- the scope, progress, results and cost of development, clinical testing and pre-market studies of any new molecular diagnostic tests that we may discover or acquire;
- the progress, results, and costs to develop additional molecular diagnostic tests;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our current issued patents, and defending intellectual property-related claims;
- our ability to enter into collaborations, licensing or other arrangements favorable to us;
- the costs of acquiring technologies or businesses, and our ability to successfully integrate and achieve the expected benefits of our business development activities and acquisitions;
- the progress, cost and results of our international expansion efforts;
- the costs of expanding our sales and marketing functions and commercial operation facilities in the United States and in new markets;
- the costs, timing and outcome of any litigation against us; and
- the costs to satisfy our current and future obligations.

***We are subject to debt covenants that impose operating and financial restrictions on us and could limit our ability to grow our business.***

Covenants in the Credit Agreement impose operating and financial restrictions on us. These restrictions prohibit or limit, among other things, our incurrence of additional indebtedness, the creation of certain types of liens, mergers or consolidations, certain change in control transactions, asset sales, payment of dividends or other distributions to shareholders, investments, transactions with affiliates, or sales to users or partnerships with companies in certain countries. These restrictions could also limit our ability to take advantage of business opportunities. We must maintain a specified leverage ratio measured as of the end of each quarter as a financial covenant under the Credit Agreement. Our ability to comply with this ratio may be affected by events beyond our control, including prevailing economic, financial and industry conditions.

Under the Credit Agreement, a change in control in our Company, which means that a shareholder or a group of shareholders is or becomes the beneficial owner, directly or indirectly, of more than 35% of the total voting power of the voting stock of the Company would require mandatory prepayment of the outstanding debt.

If we are unable to comply with the covenants and ratio in our credit agreement in the future, we may be in default under the agreement. A default would result in an increase in the rate of interest and may cause the loan repayment to be accelerated. This could have a material adverse effect on our business.

## Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

**Issuer Purchases of Equity Securities**

In June 2016, we announced that our Board of Directors had authorized us to repurchase an additional $200.0 million of our outstanding common stock increasing the cumulative share repurchase authorization since we first authorized the program in May 2010 to $1.4 billion. In connection with our most recent stock repurchase authorization, we have been authorized to complete the repurchase through open market transactions or through an accelerated share repurchase program, in each case to be executed at management's discretion based on business and market conditions, stock price, trading restrictions, acquisition activity and other factors. As of the date of this report, we have not entered into an accelerated share repurchase agreement under our most recent stock repurchase program. The repurchase program may be suspended or discontinued at any time without prior notice. The transactions effectuated to date occurred in open market purchases.

During the three months ended September 30, 2016 we acquired the following shares of common stock under our stock repurchase program:

| Period | (a) Total Number of Shares Purchased | (b) Average Price Paid per Share | (c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs | (d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs |
|---|---|---|---|---|
| July 1, 2016 to July 31, 2016 | — | $ — | — | 192.3 |
| August 1, 2016 to August 31, 2016 | 0.6 | $ 21.11 | 0.6 | 179.6 |
| September 1, 2016 to September 30, 2016 | 0.4 | $ 21.53 | 0.4 | 171.0 |
| Total | 1.0 | | 1.0 | 171.0 |

## Item 3. Defaults Upon Senior Securities.

None.

## Item 4. Mine Safety Disclosures.

None.

## Item 5. Other Information.

None.

**Item 6. Exhibits.**

| | |
|---|---|
| 10.1++ | Agreement and Plan of Merger, dated August 3, 2016, by and among the Registrant, Myriad Merger Sub, Inc., a wholly owned subsidiary of the Registrant, Assurex Health Inc., and Fortis Advisors LLC. |
| 10.2 | Credit Agreement, dated August 31, 2016, among the Registrant, the lenders named thereto and JPMorgan Chase Bank, N.A. |
| 10.3@ | Director and Executive Officer Indemnification Agreement between the Registrant and Virginia C. Drosos dated September 26, 2016. |
| 10.4@ | Executive Retention Agreement between the Registrant and Virginia C. Drosos dated September 26, 2016. |
| 31.1 | Certification of Chief Executive Officer pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002. |
| 31.2 | Certification of Chief Financial Officer pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002. |
| 32.1 | Certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Furnished). |
| 101 | The following materials from Myriad Genetics, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2016, formatted in XBRL (Extensible Business Reporting Language): (i) the unaudited Condensed Consolidated Balance Sheets, (ii) the unaudited Condensed Consolidated Statements of Operations (iii) the unaudited Consolidated Statement of Comprehensive Income, (iv) the unaudited Condensed Consolidated Statements of Cash Flows, and (v) Notes to Condensed Consolidated Financial Statements. |

(@) Management contract or compensatory plan arrangement.
(++) Confidential treatment has been requested with respect to certain portion of this exhibit, which portion has been separately filed with the Securities and Exchange Commission.

**SIGNATURES**

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

MYRIAD GENETICS, INC.

Date: November 2, 2016

By: /s/ Mark C. Capone
Mark C. Capone
President and Chief Executive Officer
(Principal executive officer)

Date: November 2, 2016

By: /s/ R. Bryan Riggsbee
R. Bryan Riggsbee
Executive Vice President, Chief Financial Officer
(Principal financial and chief accounting officer)

**Exhibit 10.1**
**CONFIDENTIAL**
**EXECUTION VERSION**

# AGREEMENT AND PLAN OF MERGER

among:

**MYRIAD GENETICS, INC.**
a Delaware corporation;

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

**ASSUREX HEALTH, INC.,**
a Delaware corporation;

*and*

**FORTIS ADVISORS LLC,**
as the Securityholders' Agent

Dated as of August 3, 2016

Portions of this Exhibit, indicated by the mark "[***]," were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant's application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

**TABLE OF CONTENTS**

**LIST OF EXHIBITS AND SCHEDULES**

**EXHIBITS**





Portions of this Exhibit, indicated by the mark "[***]," were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant's application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER** (this "Agreement") is made and entered into as of August 3, 2016, by and among **MYRIAD GENETICS, INC.**, a Delaware corporation ("Parent"); **MYRIAD MERGER SUB, INC.**, a Delaware corporation and a wholly owned Subsidiary of Parent ("Merger Sub"); **ASSUREX HEALTH, INC.**, a Delaware corporation (the "Company"); and **FORTIS ADVISORS LLC**, a Delaware limited liability company, as the Securityholders' Agent (as defined in Section 11.1(a)). Certain capitalized terms used in this Agreement are defined in Exhibit A.

## RECITALS

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

B. The respective boards of directors of Merger Sub and the Company have approved this Agreement and the Merger.

## AGREEMENT

In consideration of the mutual covenants, representations and warranties contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties to this Agreement agree as follows:

**1. Description of Transaction.**

1.1 **Merger of Merger Sub into the Company.** Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the relevant provisions of the DGCL, at the Effective Time (as defined in Section 1.3(a)), Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. The Company will continue as the surviving corporation in the Merger (the "Surviving Corporation") and a wholly owned Subsidiary of Parent.

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

1.3 **Closing; Effective Time.**

**(a)** The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA at 10:00 a.m. (Eastern time) on a date to be mutually agreed to by Parent and the Company, which date shall be no later than the third (3rd) Business Day after the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Sections 7 and 8 (other than those conditions which are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) or at such other time and/or date as Parent and the Company may jointly designate in writing. The date on which the Closing actually takes place is referred to in this Agreement as the "Closing Date." Contemporaneously with or as promptly as practicable after the Closing, the parties hereto shall cause a certificate of merger (the "Certificate of Merger") conforming to the requirements of the DGCL to be executed and filed with the Secretary of State of the State of Delaware and shall make all other filings or recordings required under the DGCL in connection with the consummation of the Merger. The Merger shall become effective as of the time that the Certificate of

Merger is filed with and accepted by the Secretary of State of the State of Delaware or at such later date or time as may be agreed by the Company and Parent in writing and specified in the Certificate of Merger in accordance with the DGCL (the effective time of the Merger being hereinafter referred to as the "Effective Time").

**(b)** At or prior to the Closing, the Company shall deliver the following agreements and documents to Parent:

**(i)** evidence in form and substance reasonably satisfactory to Parent that (A) this Agreement has been duly adopted and approved by the Required Merger Stockholder Vote, and such adoption and approval has not been withdrawn, rescinded or otherwise revoked; and (B) the number of shares of Company Capital Stock that constitute (or that are eligible to become as a result of such holder's delivery of a written demand for appraisal in accordance with Section 262 of the DGCL) Dissenting Shares shall be less than five percent (5%) of the Company Capital Stock outstanding immediately prior to the Closing;

**(ii)** Joinder Agreements duly executed by Effective Time Holders holding together at least 73% of the outstanding Company Capital Stock;

**(iii)** the Company Closing Certificate;

**(iv)** a certificate, in form and substance reasonably satisfactory to Parent, duly executed on behalf of the Company by the chief executive officer of the Company, containing the following information as of the Closing (such spreadsheet and accompanying certificate being referred to hereafter collectively as the "Merger Consideration Certificate"): (1) the Company's good faith estimates of the Closing Net Indebtedness Amount (the "Estimated Closing Net Indebtedness Amount"), the aggregate amount of all Company Transaction Expenses and the Net Working Capital Amount (the "Estimated Net Working Capital Amount") (including a reasonably detailed description of each component thereof) and, based upon such estimates, the Company's calculation of the Purchase Price, which calculation will, if applicable, reflect the difference between the Estimated Net Working Capital Amount and the Targeted Net Working Capital Amount; (2) the Merger Consideration payable to each Effective Time Holder; (3) the Pro Rata Share of each Effective Time Holder; (4) the Per Share Amount; and (5) the Effective Time Holder Information, along with documentation, reasonably satisfactory to Parent, in support of the calculation of the amounts set forth in the Merger Consideration Certificate;

**(v)** the Certificate of Merger, duly executed by the Company;

**(vi)** a certificate of the Secretary of the Company, dated as of the Closing Date, in form and substance reasonably satisfactory to Parent, certifying and attaching: (A) the Charter Documents of the Company, (B) the resolutions adopted by the board of directors of the Company and the stockholders of the Company to authorize and adopt this Agreement, the Merger and the other transactions contemplated hereby, and (C) the incumbency and signatures of the officers of the Company executing this Agreement and the other agreements, instruments and other documents executed by or on behalf of the Company pursuant to this Agreement or otherwise in connection with the transactions contemplated hereby;

**(vii)** written resignations of each officer and director of each Acquired Company (other than directors of Assurex Health, Ltd. appointed by Centre for Addiction and Mental Health), effective as of the Effective Time, in form and substance reasonably satisfactory to Parent;

**(viii)** the Payoff Letters, in form and substance reasonably satisfactory to Parent;

**(ix)** a FIRPTA Certificate, in form and substance reasonably satisfactory to Parent;

**(x)** evidence reasonably satisfactory to Parent that all security interests and other Encumbrances (other than Permitted Encumbrances) in any assets of any Acquired Company have been released prior to, or shall be released simultaneously with, the Closing;

**(xi)** the Escrow Agreement, duly executed by the Securityholders' Agent; and

**(xii)** the Paying Agent Agreement, duly executed by the Company and the Securityholders' Agent.

**(c)** At least three (3) Business Days prior to the Closing Date, the Company shall deliver to Parent a draft Merger Consideration Certificate, prepared based upon the information available to the Company as of such date, and shall consider in good faith any comments by Parent thereto.

**(d)** At or prior to the Closing, Parent shall deliver to the Company and the Securityholders' Agent the Escrow Agreement, duly executed by Parent, and the Paying Agent Agreement, duly executed by Parent, Merger Sub and the Paying Agent.

1.4 **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 in its entirety as of the Effective Time as set forth in the form attached hereto as Exhibit B;

**(b)** the bylaws of the Surviving Corporation shall be amended and restated as of the Effective Time in a form acceptable to Parent; and

**(c)** the directors and officers of the Surviving Corporation immediately after the Effective Time shall be those individuals designated by Parent.

1.5 **Conversion of Shares.**

**(a)** Conversion. Subject to Sections 1.5(c), 1.5(d), 1.5(e), 1.8, 1.9 and 1.10, at the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company, any stockholder of the Company or any other Person:

**(i)** each share of Company Capital Stock owned by Parent, Merger Sub, the Company or any direct or indirect wholly owned Subsidiary of Parent, Merger Sub or the Company immediately prior to the Effective Time, if any, shall be extinguished and cancelled without payment of any consideration in respect thereof;

**(ii)** each share of the common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted automatically into one share of common stock of the Surviving Corporation. From and after the Effective Time, all certificates representing the common stock of Merger Sub shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Corporation into which they were converted in accordance with the immediately preceding sentence;

**(iii)** all of the shares of Company Preferred Stock that are designated as "Series A Preferred Stock" held by each Non-Dissenting Stockholder shall be converted automatically into the right to receive (following the surrender of the certificates representing such shares of Company Preferred Stock in accordance with Section 1.9): (A) an amount in cash equal to the product of (1) $1.00 *plus* the Per Share Amount *multiplied by* (2) the total number of shares of Company Preferred Stock that are designated as "Series A Preferred Stock" held by such Non-Dissenting Stockholder; and (B) the contingent right to receive each Further Distributions Per Share Amount, if any;

**(iv)** all of the shares of Company Preferred Stock that are designated as "Series B Preferred Stock" held by each Non-Dissenting Stockholder shall be converted automatically into the right to receive (following the surrender of the certificates representing such shares of Company Preferred Stock in accordance with Section 1.9): (A) an amount in cash equal to the product of (1) $1.04 *plus* the Per Share Amount *multiplied by* (2) the total number of shares of Company Preferred Stock that are designated as "Series B Preferred Stock" held by such Non-Dissenting Stockholder; and (B) the contingent right to receive each Further Distributions Per Share Amount, if any;

**(v)** all of the shares of Company Preferred Stock that are designated as "Series C Preferred Stock" held by each Non-Dissenting Stockholder shall be converted automatically into the right to receive (following the surrender of the certificates representing such shares of Company Preferred Stock in accordance with Section 1.9): (A) an amount in cash equal to the product of (1) $2.74 *plus* the Per Share Amount *multiplied by* (2) the total number of shares of Company Preferred Stock that are designated as "Series C Preferred Stock" held by such Non-Dissenting Stockholder; and (B) the contingent right to receive each Further Distributions Per Share Amount, if any;

**(vi)** all of the shares of Company Preferred Stock that are designated as "Series D Preferred Stock" and referred to herein as Series D-1 Shares held by each Non-Dissenting Stockholder shall be converted automatically into the right to receive (following the surrender of the certificates representing such shares of Company Preferred Stock in accordance with Section 1.9): (A) an amount in cash equal to the product of (1) a price per share which results in a compound annual growth rate (measured from the date of issuance of such share) of twenty-five percent (25.0%) on $7.09 (not to exceed, in any event, a price per share equal to 3.00 times $7.09) (such amount, the "Series D-1 Hurdle Return") *multiplied by* (2) the total number of shares of Company Preferred Stock that are designated as "Series D Preferred Stock" and referred to herein as Series D-1 Shares held by such Non-Dissenting Stockholder; and (B) the contingent right to receive, after the time that the Effective Time Holder of each share of Company Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock has received distributions with respect to the Per Share Amount and Further Distributions Per Share Amount payable with respect to such share equal to the difference between (y) the Series D-1 Hurdle Return and (z) $7.09 (such difference, the "Series D-1 Hurdle Delta"), each Further Distributions Per Share Amount, if any;

**(vii)** all of the shares of Company Preferred Stock that are designated as "Series D Preferred Stock" and referred to herein as Series D-2 Shares held by each Non-Dissenting Stockholder shall be converted automatically into the right to receive (following the surrender of the certificates representing such shares of Company Preferred Stock in accordance with Section 1.9): (A) an amount in cash equal to the product of (1) $9.43 (such amount, the "Series D-2 Hurdle Return") *multiplied by* (2) the total number of shares of Company Preferred Stock that are designated as "Series D Preferred Stock" and referred to herein as Series D-2 Shares held by such Non-Dissenting Stockholder; and (B) the contingent right to receive, after the time that the Effective Time Holder of each share of Company Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock has received distributions with respect to the Per Share Amount and Further Distributions Per Share Amount payable with respect to such share equal to the difference between (y) the Series D-2 Hurdle Return and (z) $7.09 (such difference, the "Series D-2 Hurdle Delta"), each Further Distributions Per Share Amount, if any; and

**(viii)** all of the shares of Company Common Stock held by each Non-Dissenting Stockholder shall be converted automatically into the right to receive (following the surrender of the certificates representing such shares of Company Common Stock in accordance with Section 1.9): (A) an amount in cash equal to the product of (1) the Per Share Amount *multiplied by* (2) the total number of shares of Company Common Stock held by such Non-Dissenting Stockholder; and (B) the contingent right to receive each Further Distributions Per Share Amount, if any.

**(b)** Rounding. The amount of cash, if any, that each holder is entitled to receive at any particular time for the shares of Outstanding Capital Stock held by such holder or the shares of Company Capital Stock subject to Outstanding Warrants held by such holder (as the case may be) shall be rounded to the nearest cent (with $0.005 being rounded upward) and computed after aggregating the cash amounts payable at such time for all shares of Outstanding Capital Stock and all Outstanding Warrants held by such holder.

**(c)** Escrow. At the Closing, Parent shall pay to the Escrow Agent: (i) an amount in cash equal to the Initial Indemnity Escrow Deposit to secure the indemnification obligations of the Effective Time Holders under Sections 6 and 10 of this Agreement (the "Indemnity Escrow"); (ii) an amount in cash equal to the Accelerable Escrow Deposit to secure the indemnification obligations of the Effective Time Holders under Sections 6 and 10 of this Agreement (other than Section 10.2(a)(i)) (the "Accelerable Escrow"); and (iii) an amount in cash equal to the Adjustment Escrow Amount to secure any adjustments required pursuant to Section 1.10 (the "Adjustment Escrow" and, together with the Indemnity Escrow and the Accelerable Escrow, the "Escrow"). The Escrow Amounts shall be held by the Escrow Agent and disbursed by it solely for the purposes and in accordance with the terms of this Agreement and the terms of an Escrow Agreement in the form attached hereto as Exhibit C to be entered into by Parent, Securityholders' Agent and the Escrow Agent (the "Escrow Agreement"). The approval and adoption of this Agreement and approval of the Merger by the Effective Time Holders pursuant to written consents evidencing the Required Merger Stockholder Vote, the Joinder Agreements, the Warrant Surrender Agreements, the Option Termination Agreements and the Letters of Transmittal shall constitute approval by such Effective Time Holders, as specific terms of the Merger, and the irrevocable agreement of such Effective Time Holders to be bound by and comply with, all of the arrangements and provisions of this Agreement, including the withholding of the Escrow Amounts and Expense Fund and the indemnification obligations set forth in Sections 6 and 10 hereof.

**(d)** Expense Fund. At the Closing, Parent shall pay the Expense Fund to the Securityholders' Agent to be held by the Securityholders' Agent in accordance with Section 11.1.

**(e)** Adjustments. In calculating the consideration payable under this Section 1.5, Parent shall be entitled to rely on the representations and warranties contained in Section 2.3, the Company Closing Certificate and the Merger Consideration Certificate. Notwithstanding anything else to the contrary contained in this Agreement, in no event shall the aggregate merger consideration payable by Parent, Merger Sub or the Surviving Corporation to the holders of equity interests in the Company (including the holders of Company Warrants and Company Options) in connection with the Merger or the other transactions contemplated hereby (including with respect to amounts in the Escrow Amount) exceed $410,000,000, subject to any adjustments thereto with respect to the Net Working Capital Amount. In the event that the Company, at any time or from time to time between the date of this Agreement and the Effective Time, declares or pays any dividend on Company Capital Stock payable in Company Capital Stock or in any right to acquire Company Capital Stock, or effects a subdivision of the outstanding shares of Company Capital Stock into a greater number of shares of Company Capital Stock, or in the event the outstanding shares of Company Capital Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Company Capital Stock, or a record date with respect to any of the foregoing shall occur during such period, then the amounts payable in respect of shares of Outstanding Capital Stock pursuant to Section 1.5, the amounts payable in respect of the Outstanding Warrants pursuant to Section 1.6 and the amounts payable in respect of In-the-Money Options pursuant to Section 1.7 shall be appropriately adjusted; *provided*, *however*, that nothing in this Section 1.5(d) shall permit the Company to take any action with respect to its securities that is expressly prohibited by the terms of this Agreement.

**(f)** Early Releases of Accelerable Escrow. For each Effective Time Holder of Company Capital Stock who has delivered a Joinder Agreement to Parent at least three (3) Business Days prior to the Closing Date, such Effective Time Holder shall be entitled to receive a payment equal to his, her or its portion of the Accelerable Escrow Deposit from the Paying Agent at the same time as payment for his, her or its shares of Company Capital Stock pursuant to Section 1.9. For each Effective Time Holder of Company Capital Stock who delivers a Joinder Agreement to Parent later than the third (3rd) Business Day prior to the Closing Date, such Effective Time Holder shall be entitled to receive, upon the later of the date on which such Effective Time Holder delivers a Joinder Agreement to Parent and the date on which such Effective Time Holder is entitled to receive payment for his, her or its shares of Company Capital Stock pursuant to Section 1.9, payment of an amount equal to the difference of (i) his, her or its portion of the Accelerable Escrow Deposit *minus* (ii) such Effective Time Holder's share of (x) any amounts previously released to the Parent Indemnitees from the Accelerable Escrow and (y) any Accelerable Escrow Continuing Claims.

**(g)** Accelerable Escrow Treatment. For purposes of Section 1.5(a), any amounts deposited by Parent into the Accelerable Escrow shall be deemed to be received by each Effective Time Holder that has not yet executed and delivered to Parent a Joinder Agreement.

1.6 **Treatment of Company Warrants.**

**(a)** Warrants. Prior to the Closing, the Company shall cause each agreement evidencing Company Warrants to purchase shares of Company Preferred Stock (a "Company Warrant") that is outstanding as of the date of this Agreement (each such Company Warrant being referred to herein as an "Outstanding Warrant"; and each such cancellation to be evidenced pursuant to a "Warrant Surrender Agreement") to be cancelled, terminated and extinguished as of the Effective Time, and upon the cancellation thereof be converted into the right to receive:

**(i)** in respect of each share of Series B Preferred Stock subject to such Company Warrant immediately prior to such cancellation, termination and extinguishment, (A) an amount in cash equal to: (1) $1.04; *plus* (2) the Per Share Amount; *minus* (3) the exercise price per share of such Company Warrant; *plus* (B) the contingent right to receive each Further Distributions Per Share Amount, if any;

**(ii)** in respect of each share of Series C Preferred Stock subject to such Company Warrant immediately prior to such cancellation, termination and extinguishment, (A) an amount in cash equal to: (1) $2.74; *plus* (2) the Per Share Amount; *minus* (3) the exercise price per share of such Company Warrant; *plus* (B) the contingent right to receive each Further Distributions Per Share Amount, if any; and

**(iii)** in respect of each share of Series D Preferred Stock subject to such Company Warrant immediately prior to such cancellation, termination and extinguishment, (A) an amount in cash equal to: (1) the Series D-1 Hurdle Return; *minus* (2) the exercise price per share of such Company Warrant; *plus* (B) the contingent right to receive, after the time that the Effective Time Holder of each share of Company Common Stock Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock has received distributions with respect to the Per Share Amount and Further Distributions Per Share Amount payable with respect to such share equal to the Series D-1 Hurdle Delta, each Further Distributions Per Share Amount, if any.

**(b)** Warrant Surrender Agreement. Each Warrant Surrender Agreement shall be in form and substance reasonably satisfactory to Parent. The Company shall take all actions that may be necessary to ensure each holder of an Outstanding Warrant cancelled as provided in Section 1.6(a) shall cease to have any rights with respect thereto, except the right to receive the consideration specified in Section 1.6(a), without interest.

**(c)** Payment. (i) On the Closing Date for each holder of an Outstanding Warrant that delivers a duly executed Warrant Surrender Agreement to Parent prior to the Closing Date and (ii) within three (3) Business Days following the delivery of a duly executed Warrant Surrender Agreement to Parent for each holder of an outstanding Warrant that delivers a duly executed Warrant Surrender Agreement to Parent after to the Closing Date, Parent shall cause to be paid by the Paying Agent (as defined in Section 1.9(a)) to each such holder of an Outstanding Warrant the consideration specified in Section 1.6(a), without interest. For each Effective Time Holder of an Outstanding Warrant who has delivered a Warrant Surrender Agreement to Parent at least three (3) Business Days prior to the Closing Date, such Effective Time Holder shall be entitled to receive a payment equal to his, her or its Pro Rata Share of the Accelerable Escrow Deposit from the Paying Agent at the same time as payment in respect of the shares of Company Capital Stock subject to his, her or its Company Warrant pursuant to this Section 1.6 and Section 1.9. For each Effective Time Holder of an Outstanding Warrant who delivers a Warrant Surrender Agreement to Parent later than the third (3rd) Business Day prior to the Closing Date, such Effective Time Holder shall be entitled to receive, upon the later of the date on which such Effective Time Holder delivers a Warrant Surrender Agreement to Parent and the date on which such Effective Time Holder is entitled to receive payment for the shares of Company Capital Stock subject to his, her or its Company Warrant pursuant to Section 1.9, payment of an amount equal to the difference of (i) his, her or its Pro Rata Share of the Accelerable Escrow Deposit *minus* (ii) such Effective Time Holder's Pro Rata Share of (x) any amounts previously released to the Parent Indemnitees from the Accelerable Escrow and (y) any Accelerable Escrow Continuing Claims.

**(d)** Accelerable Escrow Treatment. For purposes of Section 1.6(a), any amounts deposited by Parent into the Accelerable Escrow shall be deemed to be received by each Effective Time Holder that has not yet executed and delivered to Parent a Warrant Surrender Agreement.

1.7 **Cancellation of Company Options.**

**(a)** At the Effective Time, each Company Option shall have all rights thereunder cancelled and each former holder of any cancelled In-the-Money Option, in exchange therefor, but only upon delivery to the Company of an Option Termination Agreement in the form attached hereto as Exhibit D (each, an "Option Termination Agreement"), effective upon the Closing, shall be entitled to (i) an amount in cash, without interest, equal to the product of (A) the Option Per Share Consideration multiplied by (B) the number of shares of Company Common Stock subject to such In-the-Money Option and (ii) the contingent right to receive each Further Distributions Per Share Amount, if any, less any applicable withholding Taxes. Each Company Option that is not an In-the-Money Option shall be automatically cancelled for no consideration.

**(b)** Prior to the Closing, the Company and its board of directors shall, subject to applicable Law, take all actions (including, if appropriate, amending any Company Option Plan and individual option agreements and obtaining consents from the holders of the Company Options and/or delivering optionee notices thereto) necessary to give effect to the transactions provided for in this Section 1.7 and to ensure that from and after the Effective Time, each holder of an outstanding Company Option shall cease to have any rights with respect thereto, except the right to receive the consideration specified in Section 1.7(a), without interest.

**(c)** Within ten (10) Business Days following the date hereof, the Company shall deliver to each holder of an In-the-Money Option an Option Termination Agreement. Parent shall within three (3) Business Days following the Closing Date, and subject to Parent's receipt of an Option Termination Agreement duly completed and validly executed in accordance with the instructions provided therein from each holder of an In-the-Money Option, cause the Surviving Corporation to deliver through its payroll system the consideration provided for herein to such holder. No interest shall be paid on any amounts payable upon delivery of any Option Termination Agreement. For each Effective Time Holder of an In-the-Money Option who has delivered an Option Termination Agreement to Parent at least three (3) Business Days prior to the Closing Date, such Effective Time Holder shall be entitled to receive a payment equal to his, her or its Pro Rata Share of the Accelerable Escrow Deposit from the Surviving Corporation at the same time as payment for his, her or its In-the-Money Option. For each Effective Time Holder of an In-the-Money Option who delivers an Option Termination Agreement to Parent later than the third (3rd) Business Day prior to the Closing Date, such Effective Time Holder shall be entitled to receive, upon the later of the date on which such Effective Time Holder delivers an Option Termination Agreement to Parent and the date on which such Effective Time Holder is entitled to receive payment for his, her or its In-the-Money Option, payment of an amount equal to the difference of (i) his, her or its Pro Rata Share of the Accelerable Escrow Deposit *minus* (ii) such Effective Time Holder's Pro Rata Share of (x) any amounts previously released to the Parent Indemnitees from the Accelerable Escrow and (y) any Accelerable Escrow Continuing Claims.

**(d)** Accelerable Escrow Treatment. For purposes of Section 1.7(a), any amounts deposited by Parent into the Accelerable Escrow shall be deemed to be received by each Effective Time Holder that has not yet executed and delivered to Parent an Option Termination Agreement.

1.8 **Dissenting Shares.**

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

**(b)** Loss of Dissenting Share Status. Notwithstanding the provisions of Section 1.8(a), if any holder of shares of Company Capital Stock who demands appraisal of such holder's shares under the DGCL shall effectively withdraw or lose (through the failure to perfect or otherwise) such holder's right to appraisal, then as of the Closing or the occurrence of such event, whichever occurs later, such holder's shares of Company Capital Stock shall automatically be converted into the right to receive the applicable Merger Consideration, without interest thereon, promptly following the surrender of the certificate or certificates representing such shares of Company Capital Stock.

**(c)** Notice of Dissenting Shares. The Company shall give Parent: (i) prompt notice of any demands for appraisal of shares of Company Capital Stock received by the Company, withdrawals of any demands, and any other instruments or notices served or otherwise delivered pursuant to the DGCL and received by the Company; and (ii) the opportunity to participate in all negotiations and proceedings with respect to any such demands for appraisal or other instruments or notices. The Company shall not, except with the prior written consent of Parent, make any payment with respect to any demands for appraisal of shares of Company Capital Stock or offer to settle any such demands.

1.9 **Exchange of Certificates and Payment.**

**(a)** Paying Agent. On or prior to the Closing Date, Parent shall deposit with the Paying Agent cash sufficient to pay the cash consideration payable to Effective Time Holders pursuant to Sections 1.5(a) and 1.6 (excluding, for the avoidance of doubt, the Indemnity Escrow Amount, the Adjustment Escrow Amount and the portion of the Accelerable Escrow Deposit associated with Effective Time Holders who have not delivered Joinder Agreements, Warrant Surrender Agreements and/or Option Termination Agreements to the Parent at least three (3) Business Days prior to the Closing Date, as the case may be, all of which Escrow Amounts shall be deposited with the Escrow Agent, and the Expense Fund, which shall be deposited with the Securityholders' Agent). The cash amount so deposited with the Paying Agent is referred to as the "Payment Fund." The Paying Agent will be instructed to invest the funds included in the Payment Fund in the manner directed by Parent and shall be held in accordance with the terms of this Agreement and the terms of the Paying Agent Agreement. Any interest or other income resulting from the investment of such funds shall be the property of, and will be paid to, Parent.

**(b)** Letter of Transmittal; Warrant Surrender Agreements. Promptly, but in any event within three (3) Business Days following the Effective Time, the Paying Agent shall mail (with a copy sent by email, if available) to each Person who is a record holder of Outstanding Capital Stock immediately prior to the Effective Time and who has not previously delivered a Letter of Transmittal to the Paying Agent: (i) a letter of transmittal in substantially the form attached hereto as Exhibit E (a "Letter of Transmittal"); and (ii) instructions for use in effecting the exchange of Company Stock Certificates for the Merger Consideration, if any, payable with respect to such shares of Company Capital Stock. Upon the surrender to the Paying Agent of a Company Stock Certificate (or an affidavit of lost

stock certificate as described in Section 1.9(e)), together with a duly executed Letter of Transmittal and such other documents as Parent or the Paying Agent may reasonably request, the holder of such Company Stock Certificate shall, subject to Section 1.9(h), if applicable, be entitled to receive in exchange therefor cash in an amount equal to the Merger Consideration, if any, that such holder has the right to receive pursuant to Section 1.5(a) at the time of such surrender, and the Company Stock Certificate so surrendered shall forthwith be cancelled. From and after the Effective Time, each Company Stock Certificate which prior to the Effective Time represented shares of Company Capital Stock shall be deemed to represent only the right to receive the Merger Consideration, if any, payable with respect to such shares, and the holder of each such Company Stock Certificate shall cease to have any rights with respect to the shares of Company Capital Stock formerly represented thereby. Promptly following the Effective Time, each holder of a Company Warrant who has executed and delivered the applicable Warrant Surrender Agreement shall be entitled to receive in exchange therefor cash in an amount equal to the Merger Consideration, if any, that such holder has the right to receive pursuant to Section 1.6.

**(c)** Payments. (i) On the Closing Date for each holder of Company Capital Stock who has delivered a duly executed Letter of Transmittal to the Paying Agent prior to the Closing Date and (ii) within three (3) Business Days following the delivery of the Letter of Transmittal for each holder of Company Capital Stock that delivers a duly executed Letter of Transmittal to the Paying Agent after to the Closing Date, Parent shall cause to be paid by the Paying Agent to each such holder of Company Capital Stock the consideration specified in Section 1.5, without interest. If payment of Merger Consideration in respect of shares of Company Capital Stock converted pursuant to Section 1.5 is to be made to a Person other than the Person in whose name a surrendered Company Stock Certificate is registered, it shall be a condition to such payment that the Company Stock Certificate so surrendered shall be properly endorsed or shall be otherwise in proper form for transfer and that the Person requesting such payment shall have paid any transfer and other Taxes required by reason of such payment in a name other than that of the registered holder of the Company Stock Certificate surrendered or shall have established to the satisfaction of Parent that such Tax either has been paid or is not payable.

**(d)** Stock Transfer Books. As of the Effective Time, the stock transfer books of the Company shall be closed and there shall not be any further registration of transfers of shares of Company Capital Stock thereafter on the records of the Company. If, after the Effective Time, certificates for shares of Outstanding Capital Stock ("Company Stock Certificates") are presented to the Surviving Corporation, they shall be canceled and exchanged for the Merger Consideration, if any, payable with respect to such shares as provided for in Section 1.5. No interest shall accrue or be paid on any Merger Consideration payable upon the surrender of a Company Stock Certificate.

**(e)** Lost Certificates. In the event any Company Stock Certificate representing shares of Outstanding Capital Stock shall have been lost, stolen or destroyed, Parent may, in its discretion and as a condition precedent to the payment of any Merger Consideration with respect to the shares of Company Capital Stock previously represented by such Company Stock Certificate, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an appropriate affidavit as indemnity against any claim that may be made against the Paying Agent, Parent, the Surviving Corporation or any affiliated party with respect to such Company Stock Certificate, provided that no Stockholder shall be required to deliver a bond in respect of such Company Stock Certificates.

**(f)** Undistributed Payment Funds. Any portion of the Payment Fund that remains undistributed to Effective Time Holders as of the date that is one hundred eighty (180) days after the date of this Agreement shall be delivered to Parent upon demand, and Effective Time Holders who have not theretofore received their Merger Consideration in accordance with Section 1.5 and 1.6 shall thereafter look only to Parent for satisfaction of their claims for the Merger Consideration.

**(g)** Escheat. Notwithstanding anything in this Agreement to the contrary, neither Parent nor any other Person shall be liable to any Effective Time Holder or to any other Person for any amount paid to a public official pursuant to applicable abandoned property law, escheat law or similar applicable Legal Requirement. Any Merger Consideration or other amounts remaining unclaimed by Effective Time Holders five (5) years after the Effective Time for payments to be made in connection with the Closing or such other relevant payment date for Further Distributions (or such earlier date immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Authority) shall, to the extent permitted by applicable Legal Requirements, become the property of Parent free and clear of any Encumbrance.

**(h)** Withholding. Each of the Paying Agent, Parent, the Company and the Surviving Corporation shall be entitled to (1) deduct and withhold from any consideration payable pursuant to this Agreement (including all amounts to be deposited into the Escrow Account in accordance with Section 1.5(c)) such amounts as Parent is required to deduct or withhold under the Code or any provision of state, local or foreign Tax law and (2) be provided any reasonably requested Tax forms, including IRS Form W-9 (or any successor form) or the appropriate IRS Form W-8 (or successor form), as applicable, or any similar information from the Effective Time Holder and, to the extent required by applicable Tax Legal Requirements, any beneficial owner of any interest in any of the Effective Time Holder. To the extent such amounts are so deducted or withheld and timely paid over to the appropriate Governmental Authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person on behalf of which such deduction or withholding was made. Parent, the Company and the Surviving Corporation will cooperate in good faith, and will use commercially reasonable efforts to cause the Paying Agent to agree in the Paying Agent Agreement that it will cooperate in good faith, with reasonable written requests from any Effective Time Holder concerning reduction of or relief from potential deduction or withholding of Tax; provided that such Effective Time Holder shall be responsible for any and all costs and expenses that may be incurred by the Paying Agent, Parent, the Company and the Surviving Corporation; and provided further for the avoidance of doubt, that nothing in this Section 1.9(h) shall be construed in any way as undermining the ability of the Paying Agent, Parent, the Company and the Surviving Corporation to make such deduction or withholding, have such amount be treated as paid to the Person on behalf of which such deduction or withholding was made or otherwise limit any rights of any Indemnitee as set forth in Sections 6 and 10.

1.10 **Post-Closing Adjustment to Purchase Price.**

**(a)** Calculation. As promptly as practicable, but in no event later than sixty (60) days following the Closing Date, Parent shall (i) prepare or cause to be prepared in accordance with GAAP, using the policies, conventions, methodologies and procedures used by the Company in preparing the Company Financial Statements, an unaudited consolidated balance sheet of the Company as of the close of business on the day immediately preceding the Closing Date (the "Parent Closing Balance Sheet"), together with a statement (the "Parent Closing Date Schedule") setting forth in reasonable detail Parent's calculation of the Net Working Capital Amount and the Closing Net Indebtedness Amount, and (ii) deliver to the Securityholders' Agent the Parent Closing Balance Sheet and the Parent Closing Date Schedule.

**(b)** Review/Disputes.

**(i)** From and after the Effective Time, Parent and the Surviving Corporation shall provide the Securityholders' Agent and any accountants, attorneys or advisors retained by the Securityholders' Agent with reasonable access, during normal business hours, to the relevant books and records of the Surviving Corporation used by Parent in the preparation of,

or otherwise reasonably relevant to, the Parent Closing Balance Sheet and the Parent Closing Date Schedule. If the Securityholders' Agent disputes the calculation of the Net Working Capital Amount or the Closing Net Indebtedness Amount set forth in the Parent Closing Balance Sheet or the Parent Closing Date Schedule, then the Securityholders' Agent shall deliver a written notice (a "Dispute Notice") to Parent at any time during the thirty (30) day period commencing upon receipt by the Securityholders' Agent of the Parent Closing Balance Sheet and the Parent Closing Date Schedule (the "Review Period"). The Dispute Notice shall set forth the basis for the dispute of any such calculation in reasonable detail.

**(ii)** If the Securityholders' Agent does not deliver a Dispute Notice to Parent prior to the expiration of the Review Period, the Surviving Corporation's calculation of the Net Working Capital Amount and the Closing Net Indebtedness Amount set forth in the Parent Closing Balance Sheet and the Parent Closing Date Schedule shall be deemed final and binding on Parent, the Surviving Corporation, the Securityholders' Agent and the Effective Time Holders for purposes of this Section 1.10.

**(iii)** If the Securityholders' Agent delivers a Dispute Notice to Parent prior to the expiration of the Review Period, then the Securityholders' Agent and Parent shall negotiate in good faith to reach agreement on the Net Working Capital Amount and/or the Closing Net Indebtedness Amount, as applicable, within the thirty (30) day period commencing upon receipt by Parent of the Dispute Notice. If the Securityholders' Agent and Parent are unable to reach agreement on the Net Working Capital Amount and the Closing Net Indebtedness Amount within such thirty (30) day period, then either Parent or the Securityholders' Agent may submit the unresolved objections to KPMG LLP, or if such accounting firm is unable or unwilling to serve in such capacity, an independent, national accounting firm reasonably acceptable to both Parent and the Securityholders' Agent (such firm, and any successor thereto, being referred to herein as the "Accounting Firm"), and such Accounting Firm shall be directed by Parent and the Securityholders' Agent to resolve the unresolved objections in accordance with the immediately following sentence. In connection with the resolution of any such dispute by the Accounting Firm: (A) each of Parent and the Securityholders' Agent shall have a reasonable opportunity to meet with the Accounting Firm to provide their views as to any disputed issues with respect to the calculation of the Net Working Capital Amount and the Closing Net Indebtedness Amount, as applicable, (B) the Accounting Firm shall determine the Net Working Capital Amount and the Closing Net Indebtedness Amount, as applicable, in accordance with the terms of this Agreement as promptly as reasonably practicable (and in any event, within thirty (30) days of its engagement) and upon reaching such determination shall deliver a copy of its calculations (the "Expert Calculations") to the Securityholders' Agent and Parent and (C) the determination made by the Accounting Firm of the Net Working Capital Amount and the Closing Net Indebtedness Amount, as applicable, shall be final and binding on Parent, the Surviving Corporation, the Securityholders' Agent and the Effective Time Holders for purposes of this Section 1.10, absent manifest error. In calculating the Net Working Capital Amount and the Closing Net Indebtedness Amount, as applicable, the Accounting Firm (x) shall be limited to addressing the particular disputes referred to in the Dispute Notice and (y) for each component of the Net Working Capital Amount and the Closing Net Indebtedness Amount, as applicable, such calculation shall, with respect to any disputed item, be no greater than the higher amount calculated by the Securityholders' Agent or Parent, and no less than the lower amount calculated by the Securityholders' Agent or Parent, as the case may be. The Expert Calculations shall reflect in detail the differences, if any, between the Net Working Capital Amount and the Closing Net Indebtedness Amount, as applicable, reflected therein and the Net Working Capital Amount and the Closing Net Indebtedness Amount, as applicable, set forth in the Parent Closing Balance

Sheet and Parent Closing Date Schedule. The fees and expenses of the Accounting Firm shall be paid by the prevailing party and non-prevailing party, as determined by the Accounting Firm, in inverse proportion with the extent to which the prevailing party prevails on an aggregate basis based on the relative dollar values of the amounts in dispute.

**(c)** Payment upon Final Determination of Adjustments.

**(i)** If (A) the Net Working Capital Amount as finally determined in accordance with Section 1.10(b) is less than (B) the Estimated Net Working Capital Amount (the positive amount of such difference, the "Working Capital Shortfall") by more than $250,000, then Parent and the Securityholders' Agent shall instruct the Escrow Agent to release from the Adjustment Escrow an amount in cash equal to the Working Capital Shortfall and pay such amount by delivery of immediately available funds to Parent. If the Working Capital Shortfall exceeds the amount remaining in the Adjustment Escrow (the positive amount of such difference, the "Working Capital Escrow Shortfall"), then Parent and Securityholders' Agent shall instruct the Escrow Agent to release from the Indemnity Escrow an amount equal to such Working Capital Escrow Shortfall and pay such amount by delivery of immediately available funds to Parent.

**(ii)** If (A) the Net Working Capital Amount as finally determined in accordance with Section 1.10(b) is greater than (B) the Estimated Net Working Capital Amount (the positive amount of such difference, the "Working Capital Surplus") by more than $250,000, then Parent shall pay an amount equal to the Working Capital Surplus, less any amounts paid pursuant to the Post-Closing Date Transaction Bonuses and payable as a result of the payments of such Working Capital Surplus, to the Paying Agent, and cause the Paying Agent to pay to each participating Effective Time Holder by delivery of immediately available funds such Effective Time Holder's aggregate Further Distribution Per Share Amount of the Working Capital Surplus.

**(iii)** If (A) the Closing Net Indebtedness Amount as finally determined in accordance with Section 1.10(b) is greater than (B) the Estimated Closing Net Indebtedness Amount (the positive amount of such difference, the "Closing Net Indebtedness Shortfall"), then Parent and the Securityholders' Agent shall instruct the Escrow Agent to release to Parent from the Adjustment Escrow an amount in cash equal to the Closing Net Indebtedness Shortfall. If the Closing Net Indebtedness Shortfall exceeds the amount remaining in the Adjustment Escrow (the positive amount of such difference, the "Net Indebtedness Escrow Shortfall"), then Parent and Securityholders' Agent shall instruct the Escrow Agent to release from the Indemnity Escrow an amount equal to such Net Indebtedness Escrow Shortfall and pay such amount by delivery of immediately available funds to Parent.

**(iv)** If (A) the Closing Net Indebtedness Amount as finally determined in accordance with Section 1.10(b) is less than (B) the Estimated Closing Net Indebtedness Amount (the positive amount of such difference, the "Net Indebtedness Underpayment"), then Parent shall, no later than two (2) Business Days after such determination (or, if any Effective Time Holder has not exchanged such Effective Time Holder's Company Stock Certificates pursuant to Section 1.9, then upon such exchange by such Effective Time Holder), fund the Paying Agent and cause the Paying Agent to pay to each participating Effective Time Holder by delivery of immediately available funds such Effective Time Holder's aggregate Further Distribution Per Share Amount of the Net Indebtedness Underpayment, less any amounts paid pursuant to the Post-Closing Date Transaction Bonuses and payable as a result of the payment of such Net Indebtedness Underpayment.

**(v)** After the final determination of the Closing Net Indebtedness Amount and Net Working Capital Amount in accordance with Section 1.10(b), within two (2) Business Days following the payment of any amounts required pursuant to clause (i) through (iii) of this Section 1.10(c), Parent and Securityholders' Agent shall instruct the Escrow Agent to release from the Adjustment Escrow the amount then remaining in the Adjustment Escrow, if any, and pay such amount to the Paying Agent for distribution to the participating Effective Time Holders in accordance with each such Effective Time Holder's aggregate Further Distribution Per Share Amount of the amount then remaining in the Adjustment Escrow, less any amounts paid pursuant to the Post-Closing Date Transaction Bonuses and payable as a result of such release from the Adjustment Escrow.

**(d)** Nothing in this Section 1.10 shall limit any rights of any Indemnitee as set forth in Sections 6 or 10.

1.11 **Earnout Payments.**

**(a)** Company Net Revenue Earnout Payment. If Company Net Revenue for calendar year 2017 ("2017 Company Net Revenue") exceeds Company Net Revenue for calendar year 2016 ("2016 Company Net Revenue"), then Parent shall, or shall cause the Surviving Corporation to, pay to the Effective Time Holders in accordance with this Section 1.11 an amount equal to the difference between the product of (i) [***] (the "Company Net Revenue Earnout Payment"), and (ii) any amounts paid pursuant to the Post-Closing Date Transaction Bonuses (including the employer portion of any payroll taxes thereon) payable as a result of achievement of the Company Net Revenue Earnout Payment; *provided*, *however*, that the sum of the Company Net Revenue Earnout Payment *plus* any amounts paid pursuant to the Post-Closing Date Transaction Bonuses (including the employer portion of any payroll taxes thereon) payable as a result of achievement of the Company Net Revenue Earnout Payment shall in no event exceed $85,000,000.

**(i)** Parent shall cause the Surviving Corporation to calculate, and shall cause its outside auditors to complete a review of, the Company Net Revenue of the Surviving Corporation for the year ended December 31, 2017 no later than February 15, 2018. Upon completion of such review, Parent shall deliver to the Securityholders' Agent a certificate (the "Company Net Revenue Earnout Certificate") stating the auditor-reviewed Company Net Revenue for the Surviving Corporation for calendar years 2016 and 2017 and setting forth the calculation of the Company Net Revenue Earnout Payment in reasonable detail, together with reasonable supporting information.

**(ii)** The Securityholders' Agent and its representatives and advisers shall be entitled to examine and have reasonable access to the books, records and supporting information of Parent and the Surviving Corporation relating to the calculation of the Company Net Revenue Earnout Payment. Within thirty (30) days after receipt by the Securityholders' Agent of the Company Net Revenue Earnout Certificate, the Securityholders' Agent may deliver to Parent a written notice (the "Earnout Calculation Notice") either (i) advising Parent that the Securityholders' Agent agrees with and accepts the Company Net Revenue Earnout Certificate or (ii) setting forth an explanation in reasonable detail of those items in the Company Net Revenue Earnout Certificate that the Securityholders' Agent disputes and of what the Securityholders' Agent believes is the correct calculation of the Company Net Revenue Earnout Payment. The Securityholders' Agent and the accountants engaged by the Securityholders' Agent shall be entitled to review Parent's and the Surviving Corporation's working papers and similar materials for purposes of reviewing the Company Net Revenue Earnout Certificate. If the Securityholders'

Agent does not submit an Earnout Calculation Notice within the 30-day period provided herein, then the Company Net Revenue Earnout Certificate shall become final and shall not be subject to further review, challenge or adjustment, absent fraud or manifest error. Parent and its accountants shall be entitled to review the working papers and similar materials relating to the Securityholders' Agent preparation of its Earnout Calculation Notice. If Parent shall concur with the Earnout Calculation Notice, or if Parent shall not object to the Earnout Calculation Notice in a writing received by the Securityholders' Agent within 30 days after Parent's receipt of the Earnout Calculation Notice, the calculation of the Company Net Revenue Earnout Payment set forth in the Earnout Calculation Notice shall become final and shall not be subject to further review, challenge or adjustment, absent fraud or manifest error.

**(iii)** In the event that the Securityholders' Agent and Parent are unable to resolve any disputes regarding the Company Net Revenue Earnout Payment within 30 days after the date of Parent's objection to the Earnout Calculation Notice, then such disputes shall be referred to the Accounting Firm and the determination of the Accounting Firm shall be final and shall not be subject to further review, challenge or adjustment, absent fraud or manifest error. The Accounting Firm shall determine the Earnout Amount and shall be instructed by Parent and the Securityholders' Agent to use their reasonable best efforts to reach such determination not more than 30 days after such referral. Nothing herein shall be construed to authorize or permit the Accounting Firm to resolve any item in dispute by making an adjustment to the Company Net Revenue Earnout Certificate that is outside of the range for such item defined by the Company Net Revenue Earnout Certificate and the Earnout Calculation Notice. In calculating the Company Net Revenue Earnout Payment, the Accounting Firm shall be limited to addressing any particular disputes referred to in the Earnout Calculation Notice. The fees and expenses of the Accounting Firm shall be paid by the prevailing party and non-prevailing party, as determined by the Accounting Firm, in inverse proportion with the extent to which the prevailing party prevails on an aggregate basis based on the relative dollar values of the amounts in dispute.

**(iv)** If such calculation results in a Company Net Revenue Earnout Payment being payable to the Effective Time Holders, then within three (3) Business Days following the final determination of the Company Net Revenue Earnout Payment in accordance with this Section 1.11(a), Parent shall pay, or cause the Surviving Corporation to pay, the Company Net Revenue Earnout Payment to the Effective Time Holders in accordance with Section 1.11(c).

**(v)** Parent will, and will cause the Surviving Corporation to: (A) continue the separate existence of the Surviving Corporation as a stand-alone business through at least December 31, 2017, (B) use commercially reasonable efforts to achieve the greatest Company Net Revenue Earnout Payment reasonably attainable through the application of funding, staffing and other resources (taking into account sales productivity and metrics), (C) provide the Securityholders' Agent with a quarterly report within fifteen (15) days following the end of each calendar quarter through December 31, 2017 summarizing in reasonable detail all material developments and circumstances relating to the achievement of the Company Net Revenue Earnout Payment, including the number of units of GeneSight or other products sold by the Surviving Corporation in the period covered by such report, as well as the Company Net Revenue during such period, (D) upon reasonable notice and at a reasonable time following delivery of each such quarterly report, make available the relevant members of management to meet with the Securityholders' Agent and its Representatives to discuss and respond to questions from them with respect to such quarterly report, (E) maintain books and records in accordance

with commercially reasonable business and accounting practices and in a manner necessary for the Surviving Corporation to calculate Company Net Revenue for calendar years 2016 and 2017, and (F) not take (or fail to take) any action the primary intent or purpose of which is avoiding, frustrating or reducing the amount of the Company Net Revenue Earnout Payment.

**(vi)** Subject to the limitations at the end of this Section 1.11 (a)(vi), in addition to the definition of Company Net Revenue in Exhibit A, for purposes of determining Company Net Revenue and the Company Net Revenue Earnout Payment: (A) any revenue recognized by Parent or any Subsidiary of Parent, including the Surviving Corporation, resulting from the acquisition, development or sale of a product that is competitive with GeneSight testing shall be treated as Company Net Revenue generated from the sale of the GeneSight testing; (B) any revenue recognized by Parent or any Subsidiary of Parent, including the Surviving Corporation, resulting from the sale of any product other than GeneSight testing generated by or attributable to sales personnel of the Surviving Corporation or its Subsidiaries shall be treated as Company Net Revenue generated from the sale of the GeneSight testing; and (C) any GeneSight testing revenue shall be treated as Company Net Revenue. Notwithstanding any of the foregoing, (x) any GeneSight sales revenue or other revenue generated by or attributable to sales personnel of Parent or its Affiliates (other than the Acquired Companies) in calendar year 2016 shall not be treated as Company Net Revenue; and (y) any GeneSight testing revenue generated by or attributable to sales personnel of the Parent, or any Subsidiary of Parent other than Surviving Corporation, to health care providers in family or internal medicine practices ("Primary Care Providers") who are not customers of the Surviving Corporation as of the Effective Date or who are not being actively pursued or targeted as a customer by the Surviving Corporation within 45 days after either (i) an expansion of the Medicare Local Coverage Determination to include Primary Care Providers or (ii) other coverage decisions by additional payers that provide reimbursement for tests ordered by Primary Care Providers shall not be treated as Company Net Revenue.

**(b)** Milestone Earnout Payment.

**(i)** Following the Effective Time, Parent shall use commercially reasonable efforts to cause the Surviving Corporation to complete the Company's ongoing prospective clinical utility study (ID Number ARX1006) (the "Study") in accordance with the study design in effect on the date hereof. If the Surviving Corporation achieves the main conclusion of the primary endpoint for the Study, which shall mean a statistically significant (p value < .05) improvement (*i.e.*, the main conclusion calculated in accordance with the first paragraph of Section 5.1 of the statistical analysis plan attached hereto as Schedule 1.11(b), subject to Section 1.11(b)(ii) below) in depressive symptoms between baseline and week 8 as measured on the Hamilton D17 scale for GeneSight-guided treatment versus treatment-as-usual (the "Milestone"), Parent shall pay or cause the Surviving Corporation to pay to the Effective Time Holders an amount equal to the difference between (i) $100 million in cash (the "Milestone Earnout Payment") and (ii) any amounts paid pursuant to the Post-Closing Date Transaction Bonuses (including the employer portion of any payroll taxes thereon) and payable as a result of achievement of the Company Milestone Earnout Payment, which amount shall be paid within three (3) Business Days following the successful achievement of the Milestone. For avoidance of doubt, (x) only successful achievement of the "main conclusion" of the primary endpoint described in the first paragraph of Section 5.1 of the statistical analysis plan attached hereto as Schedule 1.11(b) shall constitute successful achievement of the Milestone that gives rise to an obligation to pay the Milestone Earnout Payment and (y) successful achievement of any "additional analyses" of the primary endpoint described in the second paragraph of Section 5.1 of

the statistical analysis plan attached hereto as Schedule 1.11(b) shall neither constitute successful achievement of the Milestone nor give rise to an obligation to pay the Milestone Earnout Payment. The complete finalized statistical programming code to execute the statistical analysis for the main conclusion (as defined in the first paragraph of Section 5.1 of the statistical analysis plan including both parametric Analysis of Covariance and non-parametric Rank Analysis of Covariance options) will be locked and submitted to Parent at least five (5) Business Days before data un-blinding. In addition, the complete and final analyzable final data file(s) containing all the information needed to execute this analysis except for the indicator for the treatment group will be locked and submitted to Parent at least five (5) Business Days before data un-blinding. Immediately after un-blinding, the complete and final analyzable final data file(s), containing all the information needed to execute this analysis will be submitted to Parent. Each of the Company Net Revenue Earnout Payment and the Milestone Earnout Payment are referred to herein as an "Earnout Payment" and together as the "Earnout Payments." From the Effective Time through the completion of the Study, Parent will, and will cause the Surviving Corporation to, (A) continue the separate existence of the Surviving Corporation as a stand-alone business, (B) provide sufficient funding, staffing and resources for the Surviving Corporation to achieve a full read-out no later than November 1, 2017 and (C) not take (or fail to take) any action the primary purpose or intent of which is avoiding, frustrating or reducing the Surviving Corporation's ability to achieve the Milestone.

**(ii)** Parent and the Securityholders' Agent shall mutually agree on the method of primary efficacy analysis pursuant to Section 5.1 of Schedule 1.11(b) (either parametric or non-parametric). In the event that Parent and the Securityholders' Agent are unable to agree on such method within thirty (30) days, then such dispute shall be referred to an independent third party mutually agreeable to Parent and the Securityholders' Agent. The determination of such third party shall be final and shall not be subject to further review, challenge or adjustment, absent fraud, conflict of interest, or manifest error.

**(c)** Additional Escrow Deposit; Payment Procedures. When any Earnout Payment becomes due and payable, Parent shall pay, or cause the Surviving Corporation to pay, 8% of the amount of such Earnout Payment, by wire transfer of immediately available funds, to the Escrow Agent for deposit into the Indemnity Escrow and pay the balance of such Earnout Payment to the Paying Agent for distribution to the Effective Time Holders in accordance with Sections 1.5, 1.6 and 1.7; *provided, however*, that no such deposit into the Indemnity Escrow shall be required if an Earnout Payment is made more than eighteen (18) months following the Effective Time unless the amounts subject to Continuing Claims exceed the amount then held in the Indemnity Escrow, in which case Parent shall deposit into the Indemnity Escrow the lesser of (x) 8% of such Earnout Payment and (y) the amount by which the amounts subject to Continuing Claims exceed the amount then held in the Indemnity Escrow.

**(d)** Acceleration Events.

**(i)** The Company Net Revenue Earnout Payment will become immediately due and payable (with the Company Net Revenue Earnout Payment amount being set at the $85,000,000 maximum payment) upon the occurrence of the following on or prior to December 31, 2017: the sale or other disposition of all or substantially all of the Surviving Corporation's business or assets by way of stock sale, merger, asset sale or otherwise, or the sale, transfer, exclusive license or other disposition of all or substantially all of the Company Intellectual Property.

**(ii)** The Milestone Earnout Payment will become immediately due and payable upon the occurrence of the following on or prior to completion of the prospective clinical utility trial: the sale or other disposition of all or substantially all of the Surviving Corporation's business or assets by way of stock sale, merger, asset sale or otherwise, or the sale, transfer, exclusive license or other disposition of all or substantially all of the Company Intellectual Property.

**(e)** Setoff. The obligation of Parent to pay, or cause to be paid, any Earnout Payment pursuant to this Section 1.11 is subject to the right of Parent or its applicable designee to reduce the amount of any such Earnout Payment that becomes due and payable by the amount of any Damages incurred or suffered by a Parent Indemnitee in accordance with the terms of Section 10.3(e).

**(f)** Miscellaneous. The parties hereto understand and agree that (i) the contingent rights to receive the Earnout Payments do not constitute equity or ownership interests in Parent or the Surviving Corporation and are not transferable, except: (w) to any trust for the direct or indirect benefit of an Effective Time Holder or the immediate family of an Effective Time Holder (for purposes of this paragraph, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin), (x) by operation of law, including pursuant to a distribution or a domestic relations order, in connection with a divorce settlement or with respect to community property, (y) by will or other testamentary document or intestate succession upon the death of an Effective Time Holder and (z) to any Affiliate, stockholder, member or limited partner of an Effective Time Holder that is an Entity, provided that such Effective Time Holder who so transfers its interests is responsible to notify Parent of any such transfer and provide any necessary information related to the transferee; (ii) no Effective Time Holder shall have any rights as a securityholder of Parent or the Surviving Corporation as a result of such Effective Time Holder's contingent right to receive Earnout Payments hereunder; and (iii) no amount of interest is payable with respect to any Earnout Payment. Under applicable Tax Law, a portion of each Earnout Payment may be treated and reported as interest, including on any relevant Tax Return.

**2. Representations and Warranties of the Company.** Except as set forth in the Disclosure Schedules prepared by the Company and delivered to Parent prior to the execution of this Agreement setting forth exceptions to the Company's representations and warranties set forth in this Section 2 in accordance with Section 11.19, the Company represents and warrants to Parent and Merger Sub, to and for the benefit of the Parent Indemnitees, as follows:

2.1 **Organizational Matters.**

**(a)** Organization; Qualification. Each of the Acquired Companies has been duly organized, and is validly existing and in good standing (or its equivalent), under the laws of the jurisdiction of its formation. Each of the Acquired Companies has full power and authority: (i) to conduct its business in the manner in which its business has been and is currently being conducted; (ii) to own, operate and use its assets in the manner in which its assets have been and are currently owned, operated and used; and (iii) to perform its obligations under all Contracts to which it is a party or by which it is bound. Each of the Acquired Companies is qualified, licensed or admitted to do business as a foreign corporation, and is in good standing (or its equivalent), under the laws of all jurisdictions where the property owned, leased or operated by it or the nature of its business requires such qualification, license or admission, except where the failure to be so qualified, licensed or admitted would not have a Material Adverse Effect. Schedule 2.1(a) accurately sets forth each jurisdiction where an Acquired Company is qualified, licensed and admitted to do business, except where the failure to be so qualified, licensed or admitted would not have a Material Adverse Effect.

**(b)** Directors and Officers. Schedule 2.1(b) accurately sets forth: (i) the names of the members of the board of directors (or similar body) of each of the Acquired Companies; (ii) the names of the members of each committee of the board of directors (or similar body) of each of the Acquired Companies; and (iii) the names and titles of the officers of each of the Acquired Companies.

**(c)** Subsidiaries. Except as set forth in Schedule 2.1(c), the Company owns, of record and beneficially, one hundred percent (100%) of the issued shares of capital stock and other securities of each of the other Acquired Companies. Except for the equity interests identified in Schedule 2.1(c), none of the Acquired Companies owns, beneficially or otherwise, any shares or other securities of, or any direct or indirect equity interest in, any Entity. None of the Acquired Companies has (i) agreed or is obligated to make any future investment in or capital contribution to any Entity or (ii) guaranteed or is responsible or liable for any obligation of any Entity.

2.2 **Charter Documents; Records.** The Company has made available to Parent accurate and complete copies of: (a) the Certificate of Incorporation and bylaws (or equivalent governing documents), including all amendments thereto, of each of the Acquired Companies (the "Charter Documents"); and (b) the minutes and other records of the meetings and other proceedings of the stockholders, the board of directors (or other similar body) and all committees of the board of directors (or other similar body) of each of the Acquired Companies since January 1, 2013. There has been no material violation of any of the provisions of the Charter Documents of any of the Acquired Companies, and none of the Acquired Companies has taken any action that is inconsistent in any material respect with any resolution adopted by such Acquired Company's stockholders or members, board of directors (or other similar body) or any committee of the board of directors (or other similar body). The books of account, stock records, minute books and other records of each of the Acquired Companies are accurate and complete in all material respects, and have been maintained in accordance with all applicable Legal Requirements in all material respects. There are no outstanding powers of attorney executed by or on behalf of any Acquired Company (except, in the case of a Subsidiary, in favor of the Company).

2.3 **Capital Structure.**

**(a)** Capital Stock. The authorized capital stock of the Company consists of: (i) 42,618,507 shares of Company Common Stock and (ii) 31,460,543 shares of Company Preferred Stock, of which 5,160,725 are shares designated "Series A Preferred Stock," 13,998,351 shares are designated "Series B Preferred Stock," 4,635,035 shares are designated "Series C Preferred Stock," and 7,666,432 shares are designated "Series D Preferred Stock." As of the date of this Agreement, there are 3,382,040 shares of Common Stock, 5,160,725 shares of Series A Preferred Stock, 13,631,037 shares of Series B Preferred Stock, 4,562,043 shares of Series C Preferred Stock, and 7,650,635 shares of Series D Preferred Stock issued and outstanding. The Company has never declared or paid any dividends on any shares of Company Capital Stock. Schedule 2.3(a) sets forth the names of the Company's stockholders, the addresses (to the extent available) of each of the Company's stockholders and the class, series and number of shares of Company Capital Stock owned of record by each of such stockholders as of the date of this Agreement. All of the outstanding shares of Company Capital Stock have been duly authorized and validly issued, and are fully paid and nonassessable, and none of such shares is subject to any repurchase option, forfeiture provision or restriction on transfer (other than restrictions on transfer imposed by virtue of applicable federal and state securities laws).

**(b)** Options. Schedule 2.3(b) accurately sets forth, with respect to each Company Option outstanding as of the date of this Agreement, the Option Information. As of the date of this Agreement, 6,382,907 shares of Company Common Stock are subject to outstanding Company Options. Each option granted under the Company Option Plan was duly authorized by all requisite

corporate action on a date no later than the grant date and had an exercise price per share at least equal to the fair market value of a share of Company Common Stock on the grant date. As of the Effective Time, no former holder of a Company Option will have any rights with respect to such Company Option, other than the right to receive cash in respect thereof (if any) as contemplated by Section 1.7(a).

**(c)** Warrants. Schedule 2.3(c) accurately sets forth, with respect to each Company Warrant that is outstanding as of the date of this Agreement, the Warrant Information. The Company has delivered to Parent accurate and complete copies of each Contract pursuant to which any Company Warrant is outstanding. Each Company Warrant will have been exercised by the holder thereof prior to the Effective Time or else the holder of such Company Warrant shall have agreed that such Company Warrant shall be terminated at the time of the Closing in exchange for the cash payment contemplated by Section 1.6(a) in accordance with the applicable Warrant Surrender Agreement. As of the Effective Time, no former holder of a Company Warrant will have any rights with respect to such Company Warrant, other than the right to receive cash in respect thereof (if any) as contemplated by Section 1.6(a).

**(d)** No Other Securities. Except as set forth in Schedules 2.3(a) - 2.3(c), there is no: (i) outstanding subscription, option, call, convertible note, warrant or right (whether or not currently exercisable) to acquire any shares of or interest in Company Capital Stock or other securities of the Company; (ii) outstanding security, instrument or obligation (including any share or award of restricted stock, restricted stock unit, deferred stock or deferred stock unit or similar award) that is or may become convertible into or exchangeable for any shares of Company Capital Stock (or cash based on the value of such shares) or other securities of the Company; (iii) Contract under which the Company is or may become obligated to sell or otherwise issue any shares of or interests in Company Capital Stock or other securities, including any promise or commitment to grant securities of the Company to an employee of or other service provider to any of the Acquired Companies; or (iv) condition or circumstance that would reasonably be expected to give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of or interests in Company Capital Stock or any other securities of the Company. As of immediately following the Effective Time, there will be no outstanding options, warrants, convertible notes or other rights to purchase or otherwise acquire shares of Company Capital Stock.

**(e)** Legal Issuance. All outstanding shares of Company Capital Stock, Company Options and Company Warrants and all other securities that have been issued or granted by the Company have been issued and granted in compliance in all material respects with: (i) all applicable securities laws and other applicable Legal Requirements; and (ii) all requirements set forth in all applicable Contracts. There are no preemptive rights applicable to any outstanding shares of Company Capital Stock, and none of the outstanding shares of Company Capital Stock were issued in violation of any preemptive rights or other rights to subscribe for or purchase securities of the Company. Schedule 2.3(e) accurately identifies each Acquired Company Contract relating to any securities of any of the Acquired Companies that contains any voting rights, information rights, rights of first refusal, registration rights, financial statement requirements or other terms that would survive the Closing unless terminated or amended prior to the Closing.

**(f)** Repurchased Shares. Except as set forth on Schedule 2.3(f), all shares of capital stock of the Company ever repurchased, redeemed, converted or cancelled by the Company were repurchased, redeemed, converted or cancelled in compliance with: (i) all applicable securities laws and other applicable Legal Requirements; and (ii) all requirements set forth in all applicable Contracts.

**(g)** Merger Consideration. The allocation of Merger Consideration among the holders of shares of Company Capital Stock outstanding immediately prior to the Effective Time in the manner contemplated by Section 1.5 is in all respects consistent with, and determined in accordance with, the applicable provisions of the Certificate of Incorporation of the Company and any applicable Acquired Company Contract.

**(h)** Subsidiary Shares. Except as set forth on Schedule 2.3(h), all of the shares of each of the Subsidiaries of the Company are owned by the Company free and clear of any Encumbrance. The outstanding shares or equity interests, as applicable, of the Subsidiaries of the Company have been duly authorized and validly issued and are fully paid and nonassessable, have been issued in compliance with all applicable securities laws and other applicable Legal Requirements and were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities of such Subsidiaries. There are no options, warrants or other rights outstanding to subscribe for or purchase any shares or other securities of the Subsidiaries of the Company and such Subsidiaries are not subject to any Contract or Order under which any of such Subsidiaries is or may become obligated to sell or otherwise issue any shares or other securities. Except as set forth on Schedule 2.3(h), there are no preemptive rights applicable to any shares of any of the Subsidiaries of the Company. None of the Subsidiaries of the Company have the right to vote on or approve the Merger or any of the other transactions contemplated by this Agreement.

2.4 **Authority; Binding Nature of Agreement; Inapplicability of Anti-takeover Statutes.** The Company has the full corporate right, power and authority to enter into and to perform its obligations under this Agreement and under each other agreement, document or instrument referred to in or contemplated by this Agreement to which the Company is or will be a party; and the execution, delivery and performance by the Company of this Agreement and of each such other agreement, document and instrument have been duly authorized by all necessary action on the part of the Company's board of directors. This Agreement and each other agreement, document and instrument referred to in or contemplated by this Agreement to which the Company is a party (assuming the due authorization, execution and delivery by each other party thereto) constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to: (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. The Company's board of directors has: (i) unanimously determined that the Merger is advisable and fair and in the best interests of the Company and its stockholders; (ii) unanimously recommended the adoption of this Agreement by the holders of Company Capital Stock and directed that this Agreement and the Merger be submitted for consideration by the Company's stockholders; and (iii) to the extent necessary, adopted a resolution having the effect of causing the Company not to be subject to any state takeover law or similar Legal Requirement that might otherwise apply to the Merger or any of the other transactions contemplated by this Agreement. No state or foreign "fair price," "moratorium," "control share acquisition," "business combination" or other similar anti-takeover statute or regulation or similar Legal Requirement applies or purports to apply to the Merger, this Agreement or any of the transactions contemplated hereby.

2.5 **Financial Statements and Related Information.**

**(a)** Financial Statements. Schedule 2.5(a) contains the following financial statements and notes (collectively, the "Company Financial Statements"): (i) the audited consolidated balance sheets of the Acquired Companies as of each of December 31, 2015 and December 31, 2014, and the related audited consolidated statements of operations, consolidated statements of changes in stockholders' equity and consolidated statements of cash flows for the years then-ended, together with the notes thereto; and (ii) the unaudited consolidated balance sheet of the Acquired Companies as of June 30, 2016

(the "Unaudited Interim Balance Sheet"), and the related unaudited consolidated statement of operations, consolidated statement of changes in stockholders' equity and consolidated statement of cash flows for the six months then-ended. The Company Financial Statements present fairly, in all materials respects, the financial position of the Acquired Companies as of the respective dates thereof and the results of operations and cash flows of the Acquired Companies for the periods covered thereby, subject, in the case of the unaudited Company Financial Statements, to normal year-end adjustments and the absence of footnotes. The Company Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered.

**(b)** Internal Controls. The books, records and accounts of the Acquired Companies accurately and fairly reflect, in reasonable detail, the transactions in and dispositions of the assets of the Acquired Companies. The Acquired Companies have taken and currently take all actions necessary to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; and (iii) access to assets is permitted only in accordance with management's general or specific authorization.

**(c)** Insider Receivables and Insider Payables. Schedule 2.5(c) provides an accurate and complete breakdown of: (i) all amounts (including any Indebtedness) owed to any Acquired Company by any stockholder of the Company ("Insider Receivables") as of the date of this Agreement; and (ii) all amounts owed by any Acquired Company to any stockholder of the Company (excluding payroll and ordinary course expense reimbursements owed to employees of the Company) ("Insider Payables"). There will be no outstanding Insider Receivables or Insider Payables as of the Effective Time other than those that will be paid off in connection with the Closing.

2.6 **No Liabilities; Indebtedness.**

**(a)** Absence of Liabilities. None of the Acquired Companies has any Liabilities of any nature, whether asserted or unasserted, known or unknown, accrued, absolute, contingent, matured, unmatured or otherwise (whether or not required to be reflected in financial statements prepared in accordance with GAAP, and whether due or to become due), other than: (i) Liabilities reflected in the "liabilities" column of the Unaudited Interim Balance Sheet; (ii) accounts payable or accrued salaries and other employee compensation and benefits that have been incurred by each of the Acquired Companies since the date of the Unaudited Interim Balance Sheet in the ordinary course of business and consistent with such Acquired Company's past practices; (iii) Liabilities under the Acquired Company Contracts that are expressly set forth in and identifiable by reference to the text of such Acquired Company Contracts; (iv) the Company Transaction Expenses; or (v) the Liabilities identified in Schedule 2.6(a).

**(b)** Indebtedness. Schedule 2.6(b) sets forth a complete and correct list of each item of Indebtedness as of the date of this Agreement, identifying the creditor to which such Indebtedness is owed, the title of the instrument under which such Indebtedness is owed and the amount of such Indebtedness as of the close of business on the date of this Agreement. No Indebtedness contains any restriction upon (i) the prepayment of any of such Indebtedness, (ii) the incurrence of any other Indebtedness by any Acquired Company, or (iii) the ability of any Acquired Company to grant any Encumbrance on any of its assets. With respect to each item of Indebtedness, none of the Acquired Companies is in default and no payments are past due. None of the Acquired Companies has received any notice of a default, alleged failure to perform or any offset or counterclaim (in each case, that has not been waived or remains pending as of the date of this Agreement) with respect to any item of

Indebtedness. Neither the consummation of any of the transactions contemplated by this Agreement nor the execution, delivery or performance of this Agreement or any of the other agreements, documents or instruments referred to in this Agreement will result in a default or breach of the terms of, or accelerate the maturity of or performance under, any conditions, covenants or other terms of any such Indebtedness. None of the Acquired Companies has guaranteed or is responsible or has any Liability for any Indebtedness of any other Person, and none of the Acquired Companies has guaranteed any other obligation of any other Person.

**(c)** No "Off-Balance Sheet" Arrangements. None of the Acquired Companies has ever effected or otherwise been involved in any "off-balance sheet arrangements" (as defined in Item 303(a)(4)(ii) of Regulation S-K under the Securities Exchange Act of 1934, as amended).

2.7 **Absence of Changes.** Except as set forth on Schedule 2.7, since December 31, 2015:

**(a)** there has not been any Material Adverse Effect;

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

**(c)** none of the Acquired Companies has taken any action that would have been prohibited or otherwise restricted under Section 4.2 hereof, had such action been taken during the Pre-Closing Period.

2.8 **Title to Assets.** Each of the Acquired Companies owns, and has good and valid title to, all assets purported to be owned by it, including: (i) all owned assets reflected on the Unaudited Interim Balance Sheet (other than assets disposed of after the date thereof in the ordinary course of business and consistent with past practices of the Acquired Companies); and (ii) all owned assets referred to in Schedule 2.11(a) and all of the ownership rights of the Acquired Companies under the Contracts identified in Schedule 2.12. Except as set forth in Schedule 2.8, all of such assets are owned by the Acquired Companies free and clear of any Encumbrances, except for Permitted Encumbrances. The property and assets owned or leased by the Acquired Companies, or which they otherwise have the right to use, collectively constitute all of the properties, rights, interests and other tangible and, subject to Section 2.11, intangible assets used in or necessary to enable each Acquired Company to conduct its business in the manner in which such business is currently being conducted in all material respects. All material items of equipment, fixtures and other tangible assets owned by or leased to any of the Acquired Companies are reasonably adequate for the uses to which they are being put, are in good condition and repair (ordinary wear and tear excepted) and are adequate for the conduct of each of the Acquired Companies' respective businesses in the manner in which such businesses are currently being conducted in all material respects.

2.9 **Bank Accounts.** Schedule 2.9 provides the following information with respect to each account maintained by or for the benefit of any of the Acquired Companies at any bank or other financial institution: (a) the name of the bank or other financial institution at which such account is maintained; (b) the account number; (c) the type of account; and (d) the names of all Persons who are authorized to conduct transactions for such accounts.

2.10 **Real Property.**

**(a)** Schedule 2.10 sets forth a list of the addresses of all real property (i) owned by the Company (the "Owned Real Property"), (ii) previously owned by the Company or any of its predecessors, and (iii) leased, subleased or licensed by or for which a right to use or occupy has been granted to the Company (the "Leased Property" and together with the Owned Real Property, the "Real Property"). Schedule 2.10 also identifies (i) with respect to each previously owned real property, the Acquired Company or predecessor that was the owner of such real property and (ii) with respect to each Leased Real Property, each lease, sublease, license or other Contract under which such Leased Real Property is occupied or used, including the date of and legal name of each of the parties to such lease, sublease, license or other Contract and each amendment, modification, supplement or restatement thereto (the "Real Property Leases").

**(b)** The Company has good and clear, record and marketable fee simple title in and to the Owned Real Property, free and clear of all Encumbrances other than Permitted Encumbrances.

**(c)** There are no written or oral leases, subleases, licenses, concessions, occupancy agreements or other Contracts granting to any other Person the right to use or occupancy of any of the Real Property and there is no Person (other than the Company) in possession of any of the Real Property. With respect to each Real Property Lease that is a sublease, to the Company's Knowledge, the representations and warranties in this Section 2.10 and Section 2.12 are true and correct with respect to the underlying lease. Each Acquired Company has a valid and subsisting leasehold interest in all Leased Property.

**(d)** The Company has delivered to Parent accurate and complete copies of the Real Property Leases, in each case as amended or otherwise modified and in effect, together with any extension notices, estoppel certificates and subordination, non-disturbance and attornment agreements related thereto.

**(e)** All buildings, plants and structures located on such Owned Real Property and owned by the Company lie wholly within the boundaries of the Owned Real Property and do not encroach upon the property of, or otherwise conflict with the property rights of, any other Person.

**(f)** No eminent domain, condemnation or zoning, building code or other moratorium Action is pending or, to the Company's Knowledge, threatened, that would preclude or materially impair the use of any currently held Real Property. None of the Company's current uses of the Real Property violates in any material respect any restrictive covenant or zoning ordinance that affects any of the currently held Real Property. There have been no special assessments filed, or, to the Company's Knowledge, proposed against the Real Property or any portion thereof. None of the currently held Real Property has been damaged or destroyed by fire or other casualty.

**(g)** All Premises are supplied with utilities and other services necessary for the operation of such Premises as the same are currently operated or currently proposed to be operated, all of which utilities and other services are provided via public roads or via irrevocable appurtenant easements benefitting such parcel of Real Property on which such Premises is located, in each case, to the extent necessary for the conduct of the Company's business.

2.11 **Intellectual Property.**

**(a)** Schedule 2.11(a) accurately lists and separately identifies all Company Registered Intellectual Property that is owned by the Company setting forth, for each item, the full legal

name of the owner of record, applicable jurisdiction, status, application or registration number, and date of application, registration or issuance, as applicable, and including the following additional information: (i) for each pending or registered trademark, trade name or service mark, the class of goods covered, (ii) for each URL or domain name, any renewal date and the name of the registry, (iii) for each registered mask work, the date of first commercial exploitation, and (iv) for each pending or registered copyright registration, the author(s) of the subject work of authorship. Schedule 2.11(a)(i) accurately lists and separately identifies each material item of Company Registered Intellectual Property that is licensed from another Person and the applicable license agreement.

**(b)** Except as set forth in Schedule 2.11(b), to the Company's Knowledge: (i) each Acquired Company, and each of its licensors with respect to the licenses set forth in Schedule 2.11(a)(i), has complied with all the requirements of all United States and foreign patent offices and all other applicable Governmental Authorities to maintain the Company Patents and trademarks in full force and effect, including payment of all required fees when due to such offices or agencies; (ii) there have been no public uses, sales, offers for sale or disclosures of any invention claimed in any Company Patent prior to the earliest effective filing date of such Company Patent, in each case that would result in the claims of such Company Patent being rendered invalid; and (iii) all art, references and facts known to the Company and material to the patentability of an invention disclosed or claimed in any United States Patent within the Company Patents, and that are required to be disclosed to the United State Patent and Trademark Office, have been disclosed to the United States Patent and Trademark Office in compliance with 37 C.F.R. Section 1.56.

**(c)** Except as disclosed in Schedule 2.11(c), to the Company's Knowledge, the original, first and as applicable joint inventors of the subject matter disclosed in the Patents set forth in Schedule 2.11(a) are properly named in the such Patents. To the Knowledge of the Company, the applicable statutes governing marking of products covered by the Company Patents have been and are being fully complied with; in particular, to the Knowledge of the Company, all Company Products, if marked, have been properly marked and no Company Products have been improperly marked.

**(d)** Except as disclosed in Schedule 2.11(d), each item of Company Intellectual Property is either: (i) owned exclusively by an Acquired Company free and clear of any Encumbrances, or (ii) rightfully used and authorized for use by the Acquired Companies and their permitted successors pursuant to a valid and enforceable written license identified on Schedule 2.11(d)(i).

**(e)** To the Knowledge of the Company, each of the Acquired Companies, and each of their respective licensors and licensees, are in compliance with and have not committed any uncured breach, violation or default under, or received written notice that they have breached, violated or defaulted under, any of the terms or conditions of any license identified on Schedule 2.12. To the Company's Knowledge, there has not been any event or occurrence that would reasonably be expected to constitute such a breach, violation or default (with or without the lapse of time, giving of notice or both). Each such license is in full force and effect, and to the Company's Knowledge, no Person obligated to any Acquired Company pursuant to any such agreement is in default thereunder. Except as set forth on Schedule 2.11(e), the Acquired Companies will be permitted to continue to exercise all of the Acquired Companies' rights under such licenses to the same extent the Acquired Companies would have been able to had the Merger and the other transactions contemplated by this Agreement not occurred and without the payment of any additional amounts or consideration other than the amount of fees, royalties or payments which the Acquired Companies would otherwise have been required to pay had the transactions contemplated hereby not occurred.

**(f)** To the Knowledge of the Company, the manufacture, use, or sale of any Company Product does not infringe or misappropriate, any other Person's Intellectual Property. To the Knowledge of the Company, none of the Acquired Companies is making any unauthorized use of any confidential information or trade secrets of any third Person, including without limitation, any customer of any of the Acquired Companies, or any past or present employee of any of the Acquired Companies. To the Knowledge of the Company, the Acquired Companies have the right to use, without infringing the rights of any third Person, all customer lists, designs, manufacturing or other processes, computer software, systems, data compilations, research results and other information required for or incident to the development, manufacture, sale and commercialization of the Company Products and all other Acquired Company operations as presently conducted. Except as set forth on Schedule 2.11(f), no claims (i) challenging the validity, enforceability or ownership by any of the Acquired Companies or any of their respective licensors of any of the Company Intellectual Property, or (ii) alleging that the manufacture, use or sale of any Company Product by the Acquired Companies infringes or will infringe on any intellectual property or other proprietary or personal rights of any Person, have been asserted against any of the Acquired Companies or, to the Company's Knowledge, are threatened by any Person nor, to the Company's Knowledge, does there exist any basis for such a claim. There are no legal or governmental proceedings, including interference, re-examination, reissue, opposition, nullity, or cancellation proceedings pending that relate to any of the Company Registered Intellectual Property that is owned or exclusively licensed to any of the Acquired Companies, nor to the Company's Knowledge are there any such proceedings that relate to any of the Company Registered Intellectual Property that is non-exclusively licensed to any of the Acquired Companies, other than review of pending patent and trademark applications, and to the Company's Knowledge no such proceedings are threatened or contemplated by any Governmental Authority or any other Person. To the Company's Knowledge, all Company Registered Intellectual Property is valid and subsisting. To the Company's Knowledge, there is no unauthorized use, infringement, or misappropriation of any Company Intellectual Property by any third Person or employee, consultant or contractor.

**(g)** Except as set forth on Schedule 2.11(g), each Person who is or was an employee or independent contractor of any Acquired Company and who is or was involved in the creation or development of any Company Intellectual Property has entered into a written agreement with relevant Acquired Company assigning to such Acquired Company all Intellectual Property in any Company Products resulting from any work performed by such Person and agreeing to maintain the confidentiality of all trade secrets with respect to Company Products, each of which agreements is in full force and effect.

**(h)** Except as set forth on Schedule 2.11(h), the Merger and other transactions contemplated by this Agreement will not materially alter, impair or otherwise affect any rights of the Company or its Subsidiaries in any Company Intellectual Property.

**(i)** To the Knowledge of the Company, none of the Acquired Companies has disclosed or delivered to any escrow agent or any other Person any of the source code relating to any Company Intellectual Property, and no other Person has the right, contingent or otherwise, to obtain access to or use any such source code. To the Knowledge of the Company, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time or both) will, or could reasonably be expected to, result in the delivery, license, or disclosure of any source code to any Person who is not a current employee, consultant or contractor of an Acquired Company having a need for such access solely for the purpose of performing his or her duties to such Acquired Company for the sole benefit of the Acquired Companies and for no other purpose.

**(j)** Except as set forth on Schedule 2.11(j), none of the Acquired Companies has made any of its trade secrets available to any other Person except pursuant to written agreements restricting use solely for the benefit of an Acquired Company and requiring such Person to maintain the confidentiality of such information.

**(k)** To the Knowledge of the Company, the Company Intellectual Property does not contain any computer code designed to disrupt, disable or harm in any manner the operation of any software or hardware. To the Company's Knowledge, none of the Company Intellectual Property contains any unauthorized feature (including any worm, bomb, backdoor, clock, timer or other disabling device, code, design or routine) that causes the software or any portion thereof to be erased, inoperable or otherwise incapable of being used, either automatically, with the passage of time or upon command by any Person.

**(l)** Schedule 2.11(l) sets forth a complete and accurate list of all third-party software (i) sold with, incorporated into, or distributed with or used in the development of any Company Product or (ii) used or held for use by the Company or any of its Subsidiaries for any other purpose (excluding any license for "shrink wrap" or similarly licensed software generally commercially available to the public and any generally available, non-customized, third party software licensed to the Company that does not require aggregate payments in any given year in excess of $100,000 in license, maintenance, royalty or other fees), setting forth for each such item (A) all licenses and similar agreements pursuant to which the Acquired Companies hold rights thereto and (B) the Company Product(s) to which the item relates, if any. Except for the software that is licensed to the Acquired Companies as set forth in Schedule 2.11(l) (or not required to be listed pursuant to the exclusion in the preceding sentence), an Acquired Company exclusively owns the entire right, title, and interest in and to (including all Intellectual Property rights in) all of the material software that is used or held for use in connection with the business of the Company as currently conducted (collectively, the "Company Software"). All of the Company Software has been developed by employees, contractors or consultants of the Acquired Companies who have assigned all of their Intellectual Property rights therein (including all rights under copyright law and moral rights) to an Acquired Company pursuant to valid and enforceable agreement. No Persons (other than employees, contractors or consultants of the Company described in the immediately preceding sentence) have been involved in the creation, specification, development, testing, or authorship of any Company Software.

**(m)** Schedule 2.11(m) sets forth a complete and accurate list of all computer software programs sold with, incorporated into, or distributed in connection with or used in the development, manufacture, use, or sale of any Company Product that is, in whole or in part, subject to the provisions of any license to Publicly Available Software, setting forth for each such item (i) all licenses and similar agreements pursuant to which any of the Acquired Companies is subject or otherwise holds rights thereto, (ii) the Company Product(s) to which the item relates, and (iii) whether such item has been modified by or on behalf of an Acquired Company. Except as set forth in Schedule 2.11(m), all Publicly Available Software used by the Acquired Companies has been used without modification. None of the Acquired Companies has incorporated into any Company Product or otherwise accessed, used or distributed any Publicly Available Software, in whole or in part, in a manner that may (x) require, or condition the use, hosting or distribution of any Company Intellectual Property on the disclosure, licensing or distribution of any source code for any portion of such Company Intellectual Property, or (y) otherwise impose any limitation, restriction or condition on the right or ability of any Acquired Company to use, host or distribute any Company Intellectual Property or Company Products or to undertake any activity, and none of the Acquired Companies has any plans or has undertaken any obligation to do any of the foregoing.

**(n)** Except as set forth in Schedule 2.11(n), none of the Acquired Companies' agreements (including any agreement for the performance of professional services by or on behalf of the Acquired Companies with customers, agreements with merchants, agreements with outside consultants for the performance of professional services for or on behalf of any of the Acquired Companies or any of their respective customers, and any agreement or license with any end user or reseller of any Company Products), confers upon any Person other than an Acquired Company any ownership right, exclusive license or other exclusive right with respect to any Company Intellectual Property developed in connection with such agreement or license.

**(o)** Schedule 2.11(o) of the Company Disclosure Schedule sets forth all agreements pursuant to which any of the Acquired Companies has any current development or other professional services obligations, in each case directly relating to Company Intellectual Property. Except as specified in Schedule 2.11(o), none of the Acquired Companies has entered into any agreement to provide custom coding, new features or functionality or other software development with respect to any Company Product.

**(p)** Except as set forth in Schedule 2.11(p), none of the Acquired Companies has transferred ownership of, or granted any license with respect to, any Company Intellectual Property owned by any of the Acquired Companies to any other Person.

**(q)** Except as set forth in Schedule 2.11(q), no funding, facilities or personnel of any educational institution or Governmental Authority were used, directly or indirectly, to develop or create, in whole or in part, any Company Intellectual Property, including any portion of a Company Product. None of the Acquired Companies is or has ever been a member or promoter of, or a contributor to, any industry standards body or similar organization that could compel any Acquired Company to grant or offer to any third Person any license or right to such Company Intellectual Property. Schedule 2.11(q) sets forth a complete and accurate list of any and all grants and similar funding received by the Acquired Companies (including their respective predecessors), including the name of the granting authority.

**(r)** None of the Acquired Companies has received from any Person any threat or written notice that any of the Acquired Companies are obligated to indemnify such Person for or against any interference, infringement, misappropriation, or other conflict with respect to any of the Company Intellectual Property or any Intellectual Property of any third party.

2.12 **Contracts.** Schedule 2.12 accurately identifies each and all of the Material Contracts. The Company has made available to Parent accurate and complete copies of all written Material Contracts, including all amendments thereto. Each Material Contract is valid and in full force and effect, and is enforceable by the respective Acquired 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. None of the Acquired Companies is in material violation or material breach or in default under, any Material Contract, which remains uncured, and, to the Knowledge of the Company, no other Person is in material violation or material breach or in default under, any Material Contract which remains uncured. To the Company's Knowledge, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or would reasonably be expected to: (A) result in a material violation or material breach of any of the provisions of any Material Contract; (B) give any Person the right to declare a default or exercise any remedy under any Material Contract; (C) give any Person the right to accelerate the maturity or performance of any Material Contract; or (D) give any Person the right to cancel, terminate or modify any Material Contract. Since January 1, 2013, none of the Acquired Companies has received any

notice or other communication in writing regarding any actual or possible violation or breach of, or default under, any Material Contract. None of the Acquired Companies has waived any of its respective material rights under any Material Contract.

2.13 **Compliance with Legal Requirements.** Each of the Acquired Companies is, and has at all times since January 1, 2013 been, in compliance in all material respects with each Legal Requirement that is applicable to it or to the conduct of its business or to the ownership of its assets, including all applicable Health Care Laws. No event has occurred, and, to the Knowledge of the Company, no condition or circumstance exists, that will (with or without notice or lapse of time) constitute or result in a material violation by any of the Acquired Companies of, or a failure on the part of any of the Acquired Companies to materially comply with, any Legal Requirement. Except as set forth in Schedule 2.13, since January 1, 2013, none of the Acquired Companies has received any notice or other communication from any Person regarding any alleged violation of, or failure to comply with, any Legal Requirement. Except as set forth in Schedule 2.13, none of the Acquired Companies has, since January 1, 2013, conducted any internal investigation, inquiry, or review in connection with which the Acquired Company retained outside legal counsel for the purpose of conducting or assisting with such investigation, inquiry, or review with respect to any actual, potential, or alleged violation of any Health Care Law by the Acquired Company. None of the Acquired Companies has received any citation, directive, letter, or other written communication that any Governmental Authority has at any time since January 1, 2013, challenged or questioned the legal right of the Acquired Company to market, offer, or sell its services in the present manner or style thereof.

2.14 **Governmental Authorizations.** Schedule 2.14 identifies each Governmental Authorization held by the Acquired Companies, and the Company has made available to Parent accurate and complete copies of all Governmental Authorizations identified in Schedule 2.14. The Governmental Authorizations identified in Schedule 2.14 are valid and in full force and effect, and, collectively, constitute all material Governmental Authorizations currently necessary to enable the respective Acquired Company to conduct its business in the manner in which its business is currently being conducted and currently planned by such Acquired Company to be conducted in accordance with all applicable Legal Requirements. Each of the Acquired Companies is, and has at all times since January 1, 2013 been, in compliance in all material respects with the terms and requirements of the respective Governmental Authorizations identified in Schedule 2.14. Except as set forth in Schedule 2.14, since January 1, 2013, none of the Acquired Companies has received any notice or other communication from any Governmental Authority regarding: (i) any alleged violation of or failure to comply with any term or requirement of any Governmental Authorization; (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination, material modification or failure to renew of any material Governmental Authorization; or (iii) any failure to obtain or receive any material Governmental Authorization.

2.15 **Regulatory Matters.**

**(a)** There have been no Serious Adverse Events or Serious Injuries associated with the use (including in clinical trials) of any Product that have not been reported in accordance with a Legal Requirement. The Company has made available to Parent (i) a schedule of all payouts made by an Acquired Company or any of its Affiliates to end-users since January 1, 2013 in respect of claims relating to any Product and (ii) a schedule of all actual or threatened (in writing) claims made by end-users against an Acquired Company or any of its Affiliates relating to a Product since January 1, 2013.

**(b)** All studies, tests, and preclinical and clinical research being conducted by an Acquired Company, any of its Affiliates and, to the Knowledge of the Company, on behalf of an

Acquired Company or any of its Affiliates by any of their respective Collaborative Partners, with respect to any Product, are being, and at all times have been, conducted in material compliance with all Legal Requirements, including, as applicable, good clinical practices, and the Legal Requirements of any other Governmental Authority. No clinical trial conducted by an Acquired Company or any of its Affiliates or, to the Knowledge of the Company, on behalf of an Acquired Company or any of its Affiliates, with respect to any Product has been terminated or suspended prior to completion for safety or non-compliance reasons, and no Governmental Authority, clinical investigator or institutional review board that has or had jurisdiction over or participated in any such clinical trial has initiated or, to the Knowledge of the Company, threatened in writing to initiate, any action to terminate, materially delay or suspend, any such ongoing clinical trial, or to disqualify or restrict any clinical investigator or other person or Person involved in any such clinical trial.

**(c)** No Acquired Company nor any of its respective equityholders, officers, directors, employees, or agents (as such term is defined in 42 C.F.R. § 1001.1001(2)) is a party to or bound by, and none of the Acquired Companies' Affiliates nor any of their respective equityholders, officers, directors, employees or, to the Knowledge of the Company, agents is a party to or bound by, any order, corporate integrity agreement, settlement or other formal or informal agreement with any Governmental Authority concerning compliance with Legal Requirements governing any Federal Healthcare Program, and, to the Knowledge of the Company, no such agreement has been threatened. No Acquired Company or any of its Affiliates has engaged in a voluntary disclosure to any Governmental Authority concerning any alleged, potential or actual non-compliance with any Legal Requirements.

**(d)** No Acquired Company nor any of its respective equityholders, officers, directors or employees, or agents (as such term is defined in 42 C.F.R. § 1001.1001(2)), and none of the Acquired Companies' Affiliates nor any of their respective equityholders, officers, directors, employees, to the Knowledge of the Company, agents: (i) has been debarred, excluded or suspended from participation in any Federal Healthcare Program; (ii) to the Knowledge of the Company, is the target or subject of any current investigation by a Governmental Authority relating to any Federal Healthcare Program-related offense; or (iii) is currently charged with or has been convicted of any criminal offense relating to the delivery of an item or service under any Federal Healthcare Program.

**(e)** Except as set forth on Schedule 2.15(e), there are no Legal Proceedings pending or, to the Knowledge of the Company, threatened against an Acquired Company or any of its Affiliates under any federal or state whistleblower statute, including under the False Claims Act (31 U.S.C. § 3729 et seq.).

**(f)** Each of the Acquired Companies and each of its Affiliates that is a "covered entity" or a "business associate" as those terms are defined under the HIPAA Requirements, is in compliance in all material respects with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act of 2009, and their implementing regulations codified at 45 C.F.R. Parts 160 and 162, the HIPAA Security and Privacy Requirements codified at 45 C.F.R. Parts 160 and 164 and the Breach Notification Rule codified at 45 C.F.R. Part 164 (the "Breach Notification Rule") (collectively, the "HIPAA Requirements"), and all applicable state laws governing the privacy and security of health information. No Acquired Company or any of its Affiliates that is a covered entity or a business associate is aware of any current inquiry or active investigation by the Office for Civil Rights of the United States Department of Health and Human Services or any other Governmental Authority enforcing the HIPAA requirements. Each of the Acquired Companies and each of its Affiliates that is a covered entity or a business associate has, when required by the HIPAA Requirements, entered into "business associate" agreements as such term is defined under the HIPAA Requirements ("Business Associate Agreements") and has complied in all material respects with

the terms of such Business Associate Agreements. Except as set forth on Schedule 2.15(f), no Acquired Company nor any of their respective Affiliates that is a covered entity or business associate has experienced a "Breach" of "Unsecured Protected Health Information," as such terms are defined at 45 C.F.R. § 164.402, or material violation of the HIPAA Requirements.

2.16 **Payment Programs.** Schedule 2.16 sets forth all Payment Programs in which any Acquired Company has participated at any time since January 1, 2013 (the "Acquired Company Payment Programs"). Each Acquired Company is a participating supplier or provider, in good standing, in each of the Acquired Company Payment Programs in which it currently participates. No civil, administrative or criminal proceedings relating to any Acquired Company's participation in any Payment Program, are pending, or, to the Knowledge of the Company, threatened or reasonably foreseeable, nor has any such proceeding concluded since January 1, 2013. Except as set forth in Schedule 2.16, no Acquired Company is subject to, nor has any Acquired Company been subject to since January 1, 2013, any pre-payment utilization review or other utilization review by any Payment Program. Except as set forth in Schedule 2.16, no Payment Program is currently requesting or has requested since January 1, 2013 or, to the Knowledge of the Company, is threatening or has since January 1, 2013 threatened, any recoupment, refund, or set-off from any Acquired Company totaling $20,000 or more individually or $200,000 in the aggregate. No Payment Program has imposed any fine, penalty or other sanction on any Acquired Company since January 1, 2013. No Acquired Company has been suspended, excluded, or otherwise been the subject of any adverse action taken by any Payment Program since January 1, 2013. Except as set forth in Schedule 2.16, none of the Acquired Companies has, since January 1, 2013, submitted to any Payment Program, any false or fraudulent claims for payment, nor has any Acquired Company violated in any material respect any condition of participation, or any other rule, regulation, policy or standard of, any Payment Program.

2.17 **Privacy and Data Security.**

**(a)** The receipt, collection, handling, processing, sharing, transfer, use, disclosure and storage of any Personal Data by any of the Acquired Companies or any Affiliate of any of the Acquired Companies (including such Personal Data collected from visitors who use the website(s) of any of the Acquired Companies or any Affiliate of any of the Acquired Companies) is, and has been since January 1, 2013, in compliance with the respective privacy policies and terms of use of each Acquired Company and each of its Affiliates (including the respective privacy policies and terms of use of each such website) and is, and has been since January 1, 2013, in compliance in all material respects with all applicable Legal Requirements. None of the transactions contemplated under this Agreement (including any transfer of Personal Data resulting from any of the transactions contemplated under this Agreement) will materially violate any applicable Legal Requirements relating to privacy or security or the website privacy policy of any of the Acquired Companies or of any Affiliate of any of the Acquired Companies as it currently exists or as it existed at any time during which any Personal Data was collected or obtained by or on behalf of any of the Acquired Companies or of any Affiliate of any of the Acquired Companies. Each Acquired Company and each of its Affiliates has consistently posted in a clear and conspicuous location on all websites and on any mobile applications owned or operated by each such Acquired Company and each such Affiliate a privacy policy that describes its practices with respect to the collection, use and disclosure of personally identifiable information and that complies in all material respects with all applicable Legal Requirements. True and complete copies of all privacy policies that have been used by any of the Acquired Companies or any Affiliate of any of the Acquired Companies since January 1, 2013 have been provided to Parent.

**(b)** Except as set forth on Schedule 2.17(b), no Personal Data is stored or otherwise maintained outside the United States by any of the Acquired Companies or any Affiliate of any of the Acquired Companies or by any third party on behalf of any of the Acquired Companies or any

Affiliate of any of the Acquired Companies. To the extent that any of the Acquired Companies or any Affiliate of any of the Acquired Companies has engaged in cross-border processing of Personal Data, each such Acquired Company and each such Affiliate of the Acquired Companies is processing or controlling, as the case may be, such Personal Data, and has processed or controlled, as the case may be, at all times, in compliance in all material respects with all applicable Legal Requirements, including by registering with the relevant data protection authority in any applicable jurisdiction where each such Acquired Company and each such Affiliate of the Acquired Companies process or control Personal Data, to the extent registration is required under the applicable Legal Requirements. To the Knowledge of the Company, since January 1, 2013 no person has withdrawn his or her consent to any use or processing of his or her Personal Data or requested erasure of his or her Personal Data by any of the Acquired Companies or any Affiliate of any of the Acquired Companies, where the applicable Acquired Company or the applicable Affiliate of any of the Acquired Companies has not complied with such request.

**(c)** Each Acquired Company and each of its Affiliates has taken all commercially reasonable steps to limit access to Personal Data to: (i) those of their respective personnel and third-party vendors providing services to or on behalf of each such Acquired Company and each of its Affiliates who have a need to know such Personal Data in the execution of their duties to each such Acquired Company and each of its Affiliates; and (ii) such other Persons permitted to access such Personal Data in accordance and in in compliance in all material respects with all applicable Legal Requirements. The Business Associate Agreements covering Protected Health Information are the only Contracts between each Acquired Company and each of its Affiliates and their respective customers, vendors and other business partners relating to the collection, use, disclosure, transmission, destruction, maintenance, storage, or safeguarding of Personal Data and breach notification.

**(d)** Except as set forth on Schedule 2.17, since January 1, 2013, to the Knowledge of the Company, there have been no (1) security breaches, including unauthorized access to or unauthorized disclosure, use, or transfer, of any Personal Data, (2) security breaches of any Acquired Company IT Systems or (3) material violations of any Legal Requirements regarding Personal Data. No written notice has been provided to any of the Acquired Companies or to any Affiliate of any of the Acquired Companies by a third-party vendor or any other person of any security breach relating to Personal Data. Except as set forth on Schedule 2.17, no Person (including any Governmental Authority) has commenced any Legal Proceeding relating to the information privacy or data security practices or any of the Acquired Companies or any Affiliate of any of the Acquired Companies, or to the Knowledge of the Company, threatened any such Action or made any complaint, investigation, or inquiry relating to such practices. Since January 1, 2013, none of the Acquired Companies nor any of their Affiliates has notified, either voluntarily or as required by Legal Requirements, any affected individual, any customer, any Governmental Authority, or the media of any breach of Personal Data, and no Acquired Company nor any of its Affiliates is currently planning to conduct any such notification or investigation.

2.18 **Information Systems.**

**(a)** Each Acquired Company and each of its Affiliates controls access to its respective Acquired Company IT Systems owned or controlled by such Acquired Company or its Affiliates through the utilization of industry-standard or better security measures that are designed to prevent unauthorized access to such Acquired Company IT Systems. All of the security measures of each Acquired Company and each of its Affiliates are designed to be consistent with or exceed industry standards and are designed to (A) ensure that the Acquired Company IT Systems owned or controlled by each Acquired Company and each of its Affiliates are (i) secure from unauthorized access and (ii) free from any disabling codes or instructions, spyware, Trojan horses, worms, viruses or other software routines that permit or cause unauthorized access to, or disruption, impairment, disablement, or

destruction of, software, data or other materials; (B) prevent the unauthorized access to, use and/or disclosure of confidential information (including Personal Data) of the respective customers of each Acquired Company and each of its Affiliates; (C) prevent access without express authorization (and immediately terminate such unauthorized access) to the networks and information system of the respective customers of each Acquired Company and each of its Affiliates through the respective networks of each Acquired Company and each of its Affiliates; and (D) facilitate identification by each Acquired Company and each of its Affiliates of the person making or attempting to make unauthorized access.

**(b)** The execution, delivery or performance or this Agreement or any of the other agreements, documents, or instruments referred to in this Agreement, or the consummation of the Merger or any of the other transactions contemplated by this Agreement, shall not adversely affect the Acquired Companies' ownership of any Acquired Company IT Systems or the Acquired Companies' legal right and ability to use the Acquired Company IT Systems in the operation of the Acquired Companies' business as of and immediately following the Effective Time to the same extent as the Acquired Company IT Systems are used in the operation of the business immediately prior to the Effective Time. As of and immediately following the Effective Time, the Surviving Corporation shall have the right to use such Personal Data on identical terms and conditions as the Company enjoyed immediately prior to the Effective Time.

**(c)** The Acquired Companies own, lease or license all Acquired Company IT Systems that are used in, or necessary for, the business of the Acquired Companies. To the Knowledge of the Company, in the last twelve months, there have been no material failures, breakdowns, outages or unavailability of such Company Acquired IT Systems and the DR Plans were not activated other than for testing purposes. As of and immediately following the Effective Time, the Acquired Company IT Systems owned or controlled by each Acquired Company and each of its Affiliates shall be in the possession, custody or control of the Acquired Companies, along with all tools, documentation and other materials relating thereto, as existing immediately prior to the Effective Time.

2.19 **Disaster Recovery.** The Company has delivered to Parent a true and complete copy of all of the DR Plans. The DR Plans are consistent in all material respects with industry standards and applicable Legal Requirements. The Company has used commercially reasonable efforts to design the DR Plans to enable the ability of each Acquired Company and each of its Affiliates to resume its respective operations and performance of services promptly, and to address the continuing availability of the functionality provided by the Company Acquired IT Systems in the event of any malfunction of, or other form of disaster affecting, the Company Acquired IT Systems. Each Acquired Company and each of its Affiliates has and maintains back-up systems that are designed to ensure redundancy of all data and information that each Acquired Company and each of its Affiliates is required to maintain pursuant to any Contract or internal policy or that is otherwise material to the operation of such Acquired Company or any of its Affiliates. Since January 1, 2013, the Company has conducted a test of the DR Plans for each Acquired Company and each of its Affiliates and has corrected any material deficiencies in compliance with the DR Plans. Since January 1, 2013, none of the Acquired Companies nor any of their Affiliates has invoked its respective DR Plan.

2.20 **Tax Matters.** (i) All Taxes (whether or not shown on any Tax Return) for which any Acquired Company is liable have been timely and duly paid; (ii) all Tax Returns required to have been filed by or with respect to each Acquired Company have been timely and duly filed and all such Tax Returns are complete and accurate in all material respects;; (iii) except as set forth on Section 2.20 of the Disclosure Schedule, no extension of time within which to file any Tax Return is in effect; (iv) no waiver of any statute of limitations relating to Taxes for which any Acquired Company is liable is in effect, and

no request for such a waiver is outstanding; (v) there is no Legal Proceeding pending or proposed or threatened in writing with respect to Taxes for which any Acquired Company may be liable; (vi) there are no outstanding or pending claims made by a Governmental Authority in a jurisdiction where any Acquired Company has never paid Taxes or filed Tax Returns asserting that such Acquired Company is or may be subject to Taxes assessed by such jurisdiction, and no Governmental Authority in any such jurisdiction has ever made a claim that an Acquired Company is or may be subject to material Taxes assessed by such jurisdiction; (vii) all deficiencies asserted or assessments made as a result of any examination of the Tax Returns referred to in clause (ii) have been paid in full or otherwise finally resolved; (viii) no Acquired Company is a party to or otherwise requested any Tax rulings closing agreements or similar determinations, rulings or agreements relating to Taxes; (ix) no Acquired Company will be required to include or accelerate the recognition of any item in income, or exclude or defer any deduction or other Tax benefit, in each case in any taxable period (or portion thereof) after the Closing, as a result of any change in method of accounting, closing agreement, intercompany transaction, installment sale, election under Section 108(i) of the Code, the receipt of any prepaid amount, intercompany transactions or any excess loss account described in Treasury Regulations under Code Section 1502 (or any corresponding or similar provision of state, local or foreign income Tax law), in each case prior to the Closing; (x) there are no liens for Taxes upon the assets of any Acquired Company except liens relating to current Taxes not yet due and payable; (xi) all Taxes which any Acquired Company is required by Legal Requirement to withhold or to collect for payment have been duly withheld and collected and have been paid to the appropriate Governmental Authority and each Acquired Company has complied with all information reporting requirements under applicable Legal Requirements; (xii) no Acquired Company has been a member of any Company Group and no Acquired Company presently has or has had any direct or indirect ownership interest in any Person (other than the Subsidiaries of the Company) for Tax purposes; (xiii) no Acquired Company has any Liability for Taxes of another Person under Treasury Regulation § 1.1502-6 under any agreement or arrangement, as a transferee or successor, by contract, by operation of law or otherwise (excluding Contracts not primarily related to Taxes entered into in the ordinary course of business); (xiv) no Acquired Company has participated in any "reportable transaction" within the meaning of Treasury Regulation § 1.6011-4(b)(1); (xv) any powers of attorney granted by any Acquired Company prior to the Closing relating to Taxes will terminate and be of no effect following the Closing; (xvi) during the last three (3) years, no Acquired Company has been a party to any transaction treated by the parties thereto as one to which Section 355 of the Code applied; (xvii) no Subsidiary is or has been a "passive foreign investment company" within the meaning of Section 1297 of the Code, and no Subsidiary has any investments in "United States Property" as defined in Code Section 956; (xviii) no Acquired Company has a permanent establishment (within the meaning of any applicable Tax treaty or convention) or otherwise has an office or fixed place of business in a country other than the country in which it is organized; (xix) all intercompany pricing for transactions between or among any of the Acquired Companies or their Affiliates is in compliance in all material respects with applicable Canadian Tax Law and Section 482 of the Code; and (xx) since the date of the Unaudited Balance Sheet, the Company has not incurred any liability for Taxes arising from extraordinary gains or losses, as that term is used in GAAP, outside the ordinary course of business.

2.21 **Employment Matters; Benefit Plans.**

**(a)** Employee List. The Company has made available to Parent lists of (i) all current Acquired Company employees as of the date of this Agreement that correctly reflects: (a) their dates of employment; (b) their job titles and positions; (c) their rate of pay or annual salaries; (d) their compensation payable pursuant to bonus; (ii) visa status by applicable Acquired Company employee; and (iii) disability or other leave status of the applicable Acquired Company employees and the date such Acquired Company employee is expected to return to active service. None of the Acquired Companies is, and none of the Acquired Companies has been, bound by or a party to any collective bargaining

agreement or other Contract with a labor organization representing any Acquired Company employees, and there are no labor organizations representing or, to the Knowledge of the Company, seeking to represent any current Acquired Company employees. No Acquired Company is engaged, and since January 1, 2013 no Acquired Company has engaged, in any unfair labor practice. There are no unfair labor practice complaints pending or, to the Knowledge of the Company, threatened against any Acquired Company before the U.S. National Labor Relations Board or any similar body. None of the Acquired Companies, since January 1, 2013, has had any strike, material slowdown, work stoppage, lockout, material job action or, to the Knowledge of the Company, threat thereof, by or with respect to any of the Acquired Company employees. No event has occurred, and no condition or circumstance exists, that would reasonably be expected to give rise to or provide a basis for the commencement of any such strike, slowdown, work stoppage, lockout, job action, labor dispute or union organizing activity or any similar activity or dispute.

**(b)** At Will Employment. Except as disclosed in Schedule 2.21(b), the employment of each of the current Acquired Company employees is terminable by the Acquired Companies at will, subject to the requirements of any Legal Requirements. The Company has delivered to Parent accurate and complete copies of all material employee manuals and handbooks.

**(c)** Employee Restrictions. To the Knowledge of the Company, as of the date of this Agreement, no Acquired Company employee: (i) intends to terminate his or her employment with such Acquired Company; (ii) has received an offer to join a business that may be competitive with an Acquired Company's business; or (iii) is a party to or is bound by any confidentiality agreement, noncompetition agreement or other Contract (with any Person) that may have a material adverse effect on: (A) the performance by such employee of any of his or her duties or responsibilities as an employee of an Acquired Company; or (B) any Acquired Company's business or operations. Each Acquired Company employee whose base salary equals or exceeds $125,000 on an annualized basis during the fiscal year ended December 31, 2015 has entered into a written agreement with the relevant Acquired Company containing provisions restricting such employee from competing with the Acquired Companies, soliciting or hiring employees of any Acquired Company or interfering with customers of any Acquired Company.

**(d)** Employee Plans and Agreements. Schedule 2.21(d) contains an accurate and complete list of each material Acquired Company Employee Plan, *provided*, *however*, that, no employment agreement or offer letter need be set forth on Schedule 2.21(d) if such employment agreement or offer letter (i) relates to an employee whose base salary did not equal or exceed $125,000 on an annualized basis during the fiscal year ended December 31, 2015 or (ii) does not provide any severance or notice period in excess of ninety (90) days. No Acquired Company intends or has committed to establish or enter into any new Acquired Company Employee Plan or to modify any Acquired Company Employee Plan (except to conform any such Acquired Company Employee Plan to the requirements of any applicable Legal Requirements), in each case as previously disclosed to Parent or as required by this Agreement.

**(e)** Delivery of Documents. As applicable with respect to each Acquired Company Employee Plan set forth on Schedule 2.21(d), the Company has delivered or made available to Parent: (i) correct and complete copies of all documents setting forth the material terms of each Acquired Company Employee Plan, including all material amendments thereto and all related trust documents (or, with respect to any unwritten Acquired Company Employee Plan, a written summary thereof); (ii) the most recent summary plan description together with the summaries of material modifications thereto, if any, with respect to each such Acquired Company Employee Plan; (iii) all material Contracts relating to each Acquired Company Employee Plan, including administrative service agreements and group

insurance contracts; (iv) any applicable annual reports (Form 5500 series); (v) the most recent letter of determination or opinion letter from the U.S. Internal Revenue Service relating to the tax-qualified status of the plan; (vi) all non-routine and material correspondence to or from any Governmental Authority relating to any Acquired Company Employee Plan; and (viii) all insurance policies in the possession of any Acquired Company pertaining to fiduciary liability insurance covering the fiduciaries for each Acquired Company Employee Plan.

**(f)** Foreign Plans. Schedule 2.21(f) contains an accurate and complete list of: (i) any material Acquired Company Employee Plan that is subject to any of the Legal Requirements of any jurisdiction outside of the United States; or (ii) any material Acquired Company Employee Plan that covers or has covered Acquired Company employees whose services are or have been performed primarily outside of the United States. Each Acquired Company Employee Plan that is required to be registered under the laws of a jurisdiction outside the United States has been registered and has been maintained in all material respects in good standing with the appropriate regulatory authorities.

**(g)** Absence of Certain Retiree Liabilities. No Acquired Company Employee Plan provides (except at no cost to any Acquired Company), or reflects or represents any Liability of any Acquired Company to provide, retiree life insurance, retiree health benefits or other retiree employee welfare benefits to any Person for any reason, except as may be required by applicable Legal Requirements.

**(h)** No Defaults. Each Acquired Company has performed all material obligations required to be performed by it under each Acquired Company Employee Plan and is not in material default or violation of, and no Acquired Company has Knowledge of any material default or violation by any other party to, the terms of any Acquired Company Employee Plan. Each of the Acquired Company Employee Plans has been operated and administered in all material respects in accordance with applicable Legal Requirements, including the applicable tax qualification requirements under the Code. All contributions to, and material payments from, any Acquired Company Employee Plan which may have been required to be made in accordance with the terms of such Acquired Company Employee Plan or applicable Legal Requirements have been made. Each Acquired Company Employee Plan can be amended, terminated or otherwise discontinued after the date of this Agreement, without material liability to any of the Acquired Companies or Parent (other than accrued benefits, ordinary administration expenses, and expenses related to the termination). There are no audits (with the exception of routine compliance audits), inquiries or Legal Proceedings pending or, to the Knowledge of the Company, threatened, by any Governmental Authority with respect to any Acquired Company Employee Plan.

**(i)** No Conflict. Except as set forth on Schedule 2.21(i), neither the execution, delivery or performance of this Agreement, nor the consummation of the Merger or any of the other transactions contemplated by this Agreement, will or may (either alone or upon the occurrence of any additional or subsequent events): (i) constitute an event under any Acquired Company Employee Plan or trust that will or may result (either alone or in connection with any other circumstance or event) in any payment (whether of severance pay or otherwise), acceleration, forgiveness of Indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits (through a grantor trust or otherwise) with respect to any Acquired Company employee; or (ii) create or otherwise result in any Liability with respect to any Acquired Company Employee Plan. Except as set forth on Schedule 2.21(i), no Acquired Company is a party to any Contract that could result, separately or in the aggregate, in the payment of an "excess parachute payment" within the meaning of Section 280G as a result of the consummation of the transactions contemplated by this Agreement. None of the Acquired Companies has any obligation to make a "gross-up" or similar payment in respect of any Taxes that may become payable under Section 4999 of the Code.

**(j)** Compliance. Each of the Acquired Companies: (i) is in compliance in all material respects with all applicable Legal Requirements, Contracts and Orders respecting employment, hiring practices, employment practices, terms and conditions of employment, wages, hours or other labor-related matters, including Legal Requirements and Orders relating to discrimination, wages and hours, labor relations, leaves of absence, work breaks, classification of employees, occupational health and safety, privacy, harassment, retaliation, immigration, wrongful discharge or violation of the personal rights of Acquired Company employees (or prospective employees or other service providers), including, but not limited to, the Workers' Adjustment and Retraining Notification Act (and any similar foreign, provincial, state or local statute or regulation); (ii) has withheld and reported in all material respects all amounts required by any Legal Requirement or Contract to be withheld and reported with respect to wages, salaries and other payments or compensation to any Acquired Company employee; (iii) has no material Liability for any arrears of wages or any Taxes or any penalty for failure to comply with any of the foregoing; and (iv) has no material Liability for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Authority with respect to unemployment compensation benefits, social security or other benefits or obligations for any Acquired Company employee (other than routine payments to be made in the normal course of business and consistent with past practice). Each Acquired Company Employee Plan intended to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable U.S. Internal Revenue Service determination or opinion letter with respect to such qualification and the Tax-exempt status of its related trust, and, to the Knowledge of the Company, no circumstances exist that would reasonably be expected to adversely affect such qualified status. No Acquired Company Employee Plan is intended to meet the requirements of Section 501(c)(9) of the Code.

**(k)** Title IV of ERISA. No Acquired Company, nor any ERISA Affiliate of any Acquired Company, has, within the past six (6) years, been a participating employer, contributed to, or has had any liability with respect to (i) any multiemployer plan as defined in Section 3(37) or Section 4001(a)(3) of ERISA or Section 414(f) of the Code; (ii) any multiple employer plan within the meaning of Section 4063 or 4064 of ERISA or Section 413(c) of the Code; or (iii) any other employee benefit plan, fund, program, Contract or arrangement that is subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

**(l)** Section 409A. Each Acquired Company Employee Plan that is a nonqualified deferred compensation plan within the meaning of Section 409A of the Code has been administered, operated and maintained in all material respects according to the requirements of Section 409A of the Code. None of the Acquired Companies has any obligation to make a "gross-up" or similar payment in respect of any Taxes that may become payable under Section 409A of the Code.

**(m)** Labor Relations. There is no material Legal Proceeding, claim (other than routine claims for benefits), labor dispute or grievance pending or, to the Knowledge of the Company, threatened or reasonably anticipated relating to any employment Contract, compensation, wages and hours, leave of absence, plant closing notification, employment statute or regulation, privacy right, labor dispute, workers' compensation policy, long-term disability policy, safety, retaliation, immigration or discrimination matter involving any Acquired Company employee, including harassment complaints.

**(n)** Claims Against Plans. There are no pending or, to the Knowledge of the Company, threatened or reasonably anticipated claims (other than routine, benefit claims) or Legal

Proceedings against any of the Acquired Company Employee Plans, the assets of any of the Acquired Company Employee Plans or the Acquired Companies, or the Acquired Company Employee Plan administrator or any fiduciary of the Acquired Company Employee Plans with respect to the operation of such Acquired Company Employee Plans or asserting any rights or claims to benefits under such Acquired Company Employee Plan (other than routine, benefit claims).

**(o)** Independent Contractors. Schedule 2.21(o) accurately sets forth, with respect to each Person who is an independent contractor providing personal services, individually or through a personal services company, including any consultant, of any of the Acquired Companies:

**(i)** the name of such independent contractor and the date as of which such independent contractor was originally engaged by such Acquired Company; and

**(ii)** the aggregate dollar amount of the compensation (including all payments or benefits of any type) received by such independent contractor from the applicable Acquired Company with respect to services performed in the fiscal year ended December 31, 2015 and an estimate of the amount of such compensation projected to be paid in the fiscal year ending December 31, 2016.

**(p)** No Misclassified Employees. Except as set forth on Schedule 2.21(p) and except as would not reasonably be expected to result in material liability to the Acquired Companies: (i) no current or former independent contractor of any of the Acquired Companies could be deemed to be a misclassified employee as it relates to such independent contractor's relationship with any of the Acquired Companies; (ii) no independent contractor is eligible to participate in any Acquired Company Employee Plan that is subject to ERISA; (iii) no Acquired Company has ever had any temporary or leased employees that were not treated and accounted for in all respects as employees of such Acquired Company to the extent required by applicable Legal Requirements and (iv) no current or former employee of any of the Acquired Companies could be deemed to be a misclassified independent contractor or to be misclassified as exempt from applicable minimum wage and overtime laws.

2.22 **Environmental Matters.** Each of the Acquired Companies has at all times been, and is, in compliance in all material respects with all applicable Environmental Laws, which compliance includes the possession by each respective Acquired Company of all material Environmental Licenses and other material Governmental Authorizations required under applicable Environmental Laws, and compliance in all material respects with the terms and conditions thereof. Since January 1, 2013, none of the Acquired Companies has received any notice, claim or other communication, whether from a Governmental Authority, citizens group, current or former Acquired Company Service Provider or otherwise, that alleges that such Acquired Company is not in compliance with any Environmental Law. Since January 1, 2013, to the Knowledge of the Company, no current or prior owner of any property leased or controlled by any of the Acquired Companies has received any notice or other communication, whether from a Governmental Authority, citizens group, current or former Acquired Company Service Provider or otherwise, that alleges that such current or prior owner or such Acquired Company is not in compliance with any Environmental Law. None of the Acquired Companies has caused or contributed to any Environmental Release and there are no circumstances which would reasonably be expected to give rise to any Environmental Release by the Acquired Companies. Except as set forth on Schedule 2.22, to the Knowledge of the Company, no Contaminants are stored or contained on or under any of the Properties whether in storage tanks, landfills, pits, ponds, lagoons or otherwise. The Company has made available to Parent accurate and complete copies of all internal and external environmental audits and studies in its possession or control, if any, relating to any Acquired Company or its operations and all correspondence on substantial environmental matters relating to any Acquired Company or its operations.

2.23 **Insurance.** Schedule 2.23 sets forth a list of (i) all policies of property, general liability, directors and officers, fiduciary, employment, title, workers' compensation, environmental, product liability, cyber liability and other forms of insurance maintained by the Acquired Companies; and (ii) all pending claims that have been noticed under such insurance policies. The Company has delivered to Parent complete and correct copies of all such policies, together with all endorsements, riders and amendments thereto. With respect to any pending claims, an insurer has not reserved, questioned, denied or otherwise disputed coverage under such noticed policies. Each such policy is in full force and effect, all premiums that are due and payable under all such policies have been paid and the Company is otherwise in compliance in all material respects with the terms of such policies. No Acquired Company has received any notice of non-renewal, cancellation or termination of any insurance policy in effect on the date hereof or since January 1, 2013. All of such policies are and all similar insurance policies maintained by the Acquired Companies since January 1, 2013 were, placed with financially sound and reputable insurers, in amounts and with coverages reasonable and customary for Persons engaged in businesses similar to that engaged in by the Acquired Companies.

2.24 **Transactions with Related Parties.** Except as set forth on Schedule 2.24, no Related Party: (a) has any interest in any material asset used in or otherwise relating to the business of any of the Acquired Companies; (b) is indebted to any of the Acquired Companies (other than for ordinary business expenses); (c) has any financial interest in any material Contract, transaction or business dealing with or involving any of the Acquired Companies except employment-related arrangements; (d) to the Knowledge of the Company, is competing with any of the Acquired Companies; or (e) has asserted any claim or right against any of the Acquired Companies (other than rights to receive compensation for services performed as an officer, director or employee of any Acquired Company and other than rights to reimbursement for travel and other business expenses).

2.25 **Legal Proceedings; Orders.** Except as set forth on Schedule 2.25, there is no pending Legal Proceeding and, to the Knowledge of the Company, no Person has threatened to commence any Legal Proceeding: (i) that involves any of the Acquired Companies, or in which any of the Acquired Companies is a plaintiff, complainant or defendant with respect to any of the assets owned or used by any of the Acquired Companies or any Person whose liability for such Legal Proceeding any of the Acquired Companies has or may have retained or assumed, either contractually or by operation of law; (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement; or (iii) that relates to the ownership of any capital stock of any of the Acquired Companies, or any option or other right to the capital stock or other securities of any of the Acquired Companies, or right to receive consideration as a result of this Agreement. Since January 1, 2013, no Legal Proceeding has been commenced by or against, or to the Knowledge of the Company, threatened against, any of the Acquired Companies. There is no Order to which any of the Acquired Companies, or any of the assets owned or used by each of the Acquired Companies, is subject. To the Knowledge of the Company, no officer or other employee of any of the Acquired Companies is subject to any Order that prohibits such officer or other employee from engaging in or continuing any conduct, activity or practice relating to the respective Acquired Company's business.

2.26 **Non-Contravention; Consents.** Except as set forth in Schedule 2.26, neither: (1) the execution, delivery or performance of this Agreement or any of the other agreements, documents or instruments referred to in this Agreement; nor (2) the consummation of the Merger or any of the other transactions contemplated by this Agreement or any such other agreement, document or instrument, will (with or without notice or lapse of time):

**(a)** contravene, conflict with or result in a violation of: (i) any of the provisions of any Charter Documents of any of the Acquired Companies; or (ii) any resolution adopted by the stockholders, board of directors or any committee of the board of directors of any of the Acquired Companies;

**(b)** contravene, conflict with or result in a violation of, or give any Governmental Authority or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which any of the Acquired Companies or any of the assets owned or used by any of the Acquired Companies, is subject;

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

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

**(e)** result in the imposition or creation of any Encumbrance upon or with respect to any asset owned or used by any of the Acquired Companies (except for Permitted Encumbrances).

Except as set forth in Schedule 2.26, the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and compliance with the applicable requirements of the HSR Act, none of the Acquired Companies is and none of the Acquired Companies will be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with: (x) the execution, delivery or performance of this Agreement or any of the other agreements, documents or instruments referred to in this Agreement; or (y) the consummation of the Merger or any of the other transactions contemplated by this Agreement.

2.27 **Significant Business Relationships.** Schedule 2.27 sets forth an accurate and complete list of the Acquired Companies' customers (entities which pay for or reimburse for Acquired Company Products) which account for eighty percent (80%) by dollar amount of payments received for both the year ended December 31, 2015 and the six-month period ended June 30, 2016, together with the amount of payments attributable to each such customer during such period. Since December 31, 2015, no customer listed in Schedule 2.27 has terminated its relationship with any Acquired Company or demanded a material change in the pricing or other terms of its relationship with any Acquired Company. No Acquired Company is engaged in any material dispute with any customer listed in Schedule 2.27 and, to the Knowledge of the Company, no such customer intends to terminate, limit or reduce its business relations with any Acquired Company, or adversely change the pricing or other terms of its business with any Acquired Company.

2.28 **Accounts Receivable.** All accounts receivable of the Acquired Companies have arisen from bona fide transactions by such parties in the ordinary course of the business. All accounts receivable reflected in the Unaudited Interim Balance Sheet are owned by the Acquired Companies and,

to the Knowledge of the Company, are good and collectible in the ordinary course of business at the aggregate recorded amounts thereof, net of any applicable allowance for doubtful accounts reflected in the Unaudited Interim Balance Sheet.

2.29 **Foreign Corrupt Payments; Sanctions.**

**(a)** No Acquired Company or Affiliate in connection with the business of an Acquired Company or director or officer of an Acquired Company or Affiliate in connection with the business of an Acquired Company, or, to the Knowledge of the Company, any employee, distributor, dealer, consultant, agent or other Person acting for or on behalf of an Acquired Company or any Affiliate in connection with the business of an Acquired Company, has violated the Foreign Corrupt Practices Act (15 U.S.C. §§ 78m(b), 78dd-1, 78dd-2, 78ff) (the "FCPA"), or, to the extent applicable and since its enactment, The Bribery Act of 2010 of the United Kingdom (the "UK Bribery Act") or any other applicable anti-corruption Legal Requirement ("Anti-Corruption Legal Requirement"), including: (i) by making use of the mails or any means or instrumentality of interstate commerce in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or offer, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office to secure official action, or to any person (whether or not a foreign official) to influence that person to act in breach of a duty of good faith, impartiality or trust ("acting improperly") or to reward the person for acting improperly, in each case in contravention of an applicable Anti-Corruption Legal Requirement or (ii) by requesting, agreeing to receive or accepting a financial or other advantage intending that, as a consequence, anyone's work duties will be performed improperly, or as a reward for anyone's past improper performance, in each case in contravention of an applicable Anti-Corruption Legal Requirement. Each Acquired Company and its respective Affiliates have conducted their respective businesses in connection with the business of the Acquired Companies in compliance in all material respects with all applicable Anti-Corruption Legal Requirements.

**(b)** None of the Acquired Companies nor any of their respective directors, officers, employees, affiliates (and including only for purposes of subsection (i) of this Section 2.29(b) below, affiliates, agents, distributors, sales representatives or other persons acting on behalf of any of the foregoing):

**(i)** except as set forth on Schedule 2.29(b), is currently (A) a person designated on the list of Specially Designated Nationals and Blocked Persons maintained by U.S. Treasury Department's Office of Foreign Assets ("OFAC") or any other list of persons or entities with whom dealings are restricted or prohibited by the United States, the United Kingdom, the European Union or the sanctions authorities in the jurisdictions where the Acquired Companies operate, or is fifty percent (50%) or more owned or otherwise controlled by such Person (B) the government, including any political subdivision, agency, instrumentality, of any country against which the United States, the United Kingdom, the European Union or the sanctions authorities in the jurisdictions where the Acquired Companies operate maintains comprehensive economic or financial sanctions, or is fifty percent (50%) or more owned or otherwise controlled by such government or entity; (C) a person acting or purporting to act, on behalf of, or a person at least fifty percent (50%) owned or otherwise controlled by, any of the persons listed in clauses (A) and (B) above; or (D) a person with whom dealings are prohibited or restricted on account of any economic sanctions laws or regulations of the United States, the United Kingdom, the European Union, or the sanctions authorities in the jurisdictions where the Acquired Companies operate (collectively, "Prohibited Person");

**(ii)** to the Company's Knowledge, directly or indirectly, conducts or, since January 1, 2013, has conducted any business or other dealings involving any Prohibited Person; or

**(iii)** to the Company's Knowledge, since January 1, 2013, directly or indirectly, has materially violated any applicable Legal Requirements of the United States, United Kingdom, European Union, or any Governmental Authority in the jurisdictions where the Acquired Companies operate pertaining to economic sanctions or embargos, unsanctioned foreign boycotts, money-laundering including applicable regulations of the U.S. Department of Commerce, the OFAC, and the U.S. Department of State. There are no Legal Proceedings by any Governmental Authority pending or, to the Knowledge of the Company, threatened against any Acquired Company, or any officer, director or employee thereof with respect to the foregoing.

**(iv)** to the Company's Knowledge, since January 1, 2013, has materially violated or is in material violation of any applicable Legal Requirements of the U.S. Department of Commerce, the OFAC, the U.S. Department of State, or any Governmental Authority in the jurisdictions where the Acquired Companies operate pertaining to the export of goods and services (collectively, "Export Controls"). There are no Legal Proceedings pending or, to the Knowledge of the Company threatened against any Acquired Company concerning Export Controls, and there are no facts or circumstances that would reasonably be expected to form the basis for any such Legal Proceedings with respect to Export Controls.

2.30 **Vote Required.** The affirmative votes of (i) the holders of a majority of the outstanding shares of Company Common Stock and Company Preferred Stock (having such number of votes as equal to the whole number of shares of Company Common Stock into which such holder's aggregate number of shares of Company Preferred Stock are convertible) voting together as a single class, (ii) the holders of a majority of the Series B Preferred Stock and Series C Preferred Stock voting together as a single class and (iii) the holders of a majority of the Series D Preferred Stock are the only votes of the holders of any class or series of Company Capital Stock necessary to adopt and approve this Agreement and approve the other transactions contemplated by this Agreement (the "Required Merger Stockholder Vote").

2.31 **Brokers.** Except as set forth on Schedule 2.31, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of any of the Acquired Companies.

2.32 **No Other Representations or Warranties.** Except for the representations and warranties contained in this Agreement (as modified by the Disclosure Schedules) and in the ancillary agreements, no Acquired Company, nor any other Person makes any other express or implied representation or warranty with respect to the Acquired Companies or the transactions contemplated by this Agreement, and the Company disclaims any other representations or warranties, whether made by the Acquired Companies or any of their respective Affiliates or Representatives. Except for the representations and warranties contained in Section 2 hereof (as modified by the Disclosure Schedules), the Company hereby disclaims, for itself and each of the Acquired Companies, all liability and responsibility for any representation, warranty, statement, or information made, communicated, or furnished (orally or in writing) to Parent or its Affiliates or their respective Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Parent by any Representative of any of the Acquired Companies or any of their respective Affiliates). The Acquired Companies make no representations or warranties to Parent regarding any projection or forecast regarding future results or activities or the probable success or profitability of any of the Acquired Companies.

**3. Representations and Warranties of Parent and Merger Sub.** Parent and Merger Sub represent and warrant to the Company as follows, to and for the benefit of the Holder Indemnitees, as follows:

3.1 **Organization and Standing.** Each of Parent and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the laws of the State of its incorporation.

3.2 **Authority; Binding Nature of Agreement.** Parent and Merger Sub have the full corporate right, power and authority to enter into and perform their obligations under this Agreement and under each other agreement, document and instrument referred to in this Agreement to which Parent or Merger Sub is a party; and the execution, delivery and performance by Parent and Merger Sub of this Agreement and each such other agreement, document and instrument have been duly authorized by all necessary action on the part of Parent and Merger Sub and their respective boards of directors. No vote of Parent's stockholders is needed to approve the Merger. This Agreement and each other agreement, document or instrument referred to in this Agreement to which Parent or Merger Sub is a party (assuming due authorization, execution and delivery by each other party thereto) constitutes the legal, valid and binding obligation of Parent and Merger Sub, as the case may be, enforceable against Parent and Merger Sub 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.

3.3 **Non-Contravention; Consents.**

**(a)** Non-Contravention. Neither: (i) the execution, delivery or performance of this Agreement or any of the other agreements, documents or instruments referred to in this Agreement; nor (ii) the consummation of the Merger or any of the other transactions contemplated by this Agreement or any of such other agreements, documents or instruments, will (with or without notice or lapse of time) contravene, conflict with or result in a violation of: (A) any of the provisions of the Certificate of Incorporation or bylaws of Parent or Merger Sub; (B) any resolution adopted by the stockholders, the board of directors or any committee of the board of directors of Parent or Merger Sub; (C) any provision of any material Contract by which Parent is bound; or (D) any Legal Requirement or Order to which Parent or Merger Sub is subject.

**(b)** Consents. Neither Parent nor Merger Sub will be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with: (i) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement; or (ii) the consummation of the Merger or any of the other transactions contemplated by this Agreement, except for: (A) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware (B) compliance with the applicable requirements of the HSR Act, and (C) any filing, notice or Consent which, if not made or obtained, would not reasonably be expected to result in a material adverse effect on Parent or Merger Sub's ability to consummate the Merger or the other transactions contemplated hereby.

3.4 **Brokers.** Except as set forth on Schedule 3.4, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Merger Sub.

3.5 **Sufficiency of Funds.** Parent and Merger Sub have and will have at the Closing, and when any Earnout Payments become due, sufficient immediately available funds on hand or available under existing credit facilities (without requiring the prior consent, approval or other discretionary action of any lender or other Person) to fulfill their respective obligations hereunder.

3.6 **No Reliance On Other Representations and Warranties.** In making its decision to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement, Parent has relied solely upon the representations and warranties of the Company set forth in Section 2 (and acknowledges that such representations and warranties are the only representations and warranties made by the Company) and has not relied upon any other information provided by, for or on behalf of the Acquired Companies, or their respective Representatives, to Parent in connection with the transactions contemplated by this Agreement. Parent has entered into the transactions contemplated by this Agreement with the understanding, acknowledgement and agreement that no representations or warranties, express or implied, are made with respect to any projection or forecast regarding future results or activities or the probable success or profitability of any of the Acquired Companies. Parent acknowledges that no current or former stockholder, director, officer, employee, affiliate, agent, consultant, advisor or other representative of any of the Acquired Companies (or any of their respective Affiliates) has made or is making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied.

**4. Certain Covenants of the Company.**

4.1 **Access and Investigation.** During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement pursuant to Section 9 or the Effective Time (the "Pre-Closing Period"), the Company shall, and shall cause its Representatives and each of the other Acquired Companies and their respective Representatives to provide Parent and Parent's Representatives with reasonable access during normal business hours to the Acquired Companies' Representatives, personnel, properties and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to the Acquired Companies, and with such additional financial, operating and other data and information regarding the Acquired Companies, as Parent may reasonably request. During the Pre-Closing Period, Parent may, with the Company's prior consent in each case (such consent not to be unreasonably withheld, conditioned or delayed), make inquiries of Persons having business relationships with any of the Acquired Companies (including suppliers, licensors and customers) and the Company shall cause each Acquired Company to help facilitate, and to cooperate with Parent in connection with, such inquiries, in each case in compliance with all applicable Legal Requirements (including any applicable antitrust or competition laws or regulations). Notwithstanding the foregoing, the Acquired Companies shall not be required to provide access to or disclose information where access or disclosure would waive the attorney-client privilege of an Acquired Company, in which case the parties will work in good faith to provide access to or disclose such information in a manner that would not waive such attorney-client privilege.

4.2 **Operation of the Business of the Acquired Companies.** During the Pre-Closing Period, the Company shall ensure that each of the Acquired Companies shall conduct its business and operations in the ordinary course and in substantially the same manner as such business and operations have been conducted prior to the date of this Agreement, and each of the Acquired Companies shall use reasonable efforts to maintain and preserve intact its current business organization, keep available the services of its current officers and employees and maintain its relations and goodwill with all suppliers, customers, landlords, creditors, employees and other Persons having business relationships with the Acquired Companies (other than terminations of employees for cause). Without limiting the generality of the foregoing, during the Pre-Closing Period, none of the Acquired Companies shall:

**(a)** declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of capital stock or other securities, or repurchase, redeem or otherwise reacquire any shares of capital stock or other securities;

**(b)** sell, issue or authorize the issuance of: (i) any capital stock or other equity security; (ii) any option or right to acquire any capital stock (or cash based on the value of capital stock) or other security; or (iii) any instrument convertible into or exchangeable for any capital stock (or cash based on the value of capital stock) or other security (except that the Company shall be permitted to issue Company Common Stock upon the exercise of Company Warrants and Company Options in accordance with their respective terms as in effect on the date of this Agreement);

**(c)** amend or permit the adoption of any amendment to such Acquired Company's Charter Documents or effect, or permit such Acquired Company to become a party to, any recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

**(d)** form any Subsidiary or acquire any equity interest or other interest in any other Entity;

**(e)** make any capital expenditure, except for capital expenditures that, when added to all other capital expenditures made on behalf of the Acquired Companies during the Pre-Closing Period, do not exceed $200,000;

**(f)** (i) enter into any Contract that is or would constitute a Material Contract; or (ii) materially amend, extend or prematurely terminate, or waive any material right or remedy under, any Contract that is or would constitute a Material Contract, except in the case of each of clauses (i)-(ii), in the ordinary course of business consistent with past practices;

**(g)** (i) acquire, lease or license any right or other asset from any other Person for an aggregate value in excess of $200,000; (ii) sell or otherwise dispose of, or lease or license (or grant any other right with respect to), any material right or other material asset to any other Person; or (iii) waive or relinquish any material right, except in the case of each of clauses (i)-(iii), in the ordinary course of business consistent with past practices;

**(h)** (i) lend money to any Person (except that each of the Acquired Companies may make advances to current employees of such Acquired Company in the ordinary course of business consistent with past practices); or (ii) incur or guarantee any Indebtedness (other than Indebtedness that will be repaid in full at the Closing pursuant to a Payoff Letter);

**(i)** except in the ordinary course of business or as otherwise required by Legal Requirements or any Acquired Company Employee Plan; (i) enter into any collective bargaining agreement; (ii) establish, adopt, materially amend or terminate any Acquired Company Employee Plan; (iii) make any commitment to pay any bonus or profit-sharing payment, cash incentive payment or similar payment; (iii) increase, or make any commitment to increase, the amount of the wages, salary, commissions, severance, termination pay or change in control pay, fringe benefits or other employee benefits or compensation (including equity-based compensation, whether payable in cash or otherwise) or remuneration payable to any of its officers or employees; (iv) promote or change the title of any of its officers; or (v) hire or make an offer to hire any new officer with annual compensation in excess of $100,000;

**(j)** change any of its methods of accounting or accounting practices in any material respect (other than as required by applicable accounting or auditing standards);

**(k)** make or change any material Tax election, change an annual Tax or accounting period, adopt or change any Tax or accounting method, file any amended material Tax Return, enter into any closing agreement, settle any material Tax claim or assessment relating to any Acquired Company, surrender any right to claim a refund of material Taxes, or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to any Acquired Company;

**(l)** commence or settle any Legal Proceeding;

**(m)** accelerate the collection of any accounts receivable or delay the payment of any accounts payable, in each case, outside the ordinary course of business consistent with past practice;

**(n)** except as required by GAAP, write off as uncollectible, or establish any extraordinary reserve with respect to, any account receivable;

**(o)** cancel any of its respective insurance policies identified in Schedule 2.23 or reduce the amount of any insurance coverage provided by such insurance policies;

**(p)** make any pledge of any of its assets or otherwise permit any of its assets to become subject to any Encumbrance, except for pledges of immaterial assets made in the ordinary course of business and consistent with such Acquired Company's past practices and Permitted Encumbrances; and

**(q)** agree or commit to take any of the actions described in clauses "(a)" through "(p)" above.

Notwithstanding the foregoing, an Acquired Company may take any action described in: (i) clauses "(a)" through "(p)" above if: (A) Parent gives its prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) to the taking of such action by the Acquired Company; or (B) such action is required to be taken by this Agreement; or (ii) Schedule 4.2.

4.3 **Notification.** Each of the parties hereto shall refrain from taking any action which would render any representation or warranty contained in this Agreement inaccurate as of the Effective Time. During the Pre-Closing Period, the Company shall promptly notify Parent in writing of: (i) any breach of any covenant or obligation of the Company such that the condition in Section 7.2 would not be satisfied; and (ii) any event, condition, fact or circumstance that would make the timely satisfaction of any of the conditions set forth in Section 7 impossible or unlikely. No notification under this Section 4.3 shall be required with respect to matters consented to in writing by Parent pursuant to the last paragraph of Section 4.2 or the actual taking of actions contemplated by Schedule 4.2.

4.4 **No Negotiation.** During the Pre-Closing Period, the Company shall not, and the Company shall not authorize or permit, any of the Acquired Companies or authorize or direct any Representative of any of the Acquired Companies to: (a) solicit or encourage the initiation or submission of any expression of interest, inquiry, proposal or offer from any Person (other than Parent) relating to a possible Acquisition Transaction; (b) participate in any discussions or negotiations or enter into any agreement, understanding or arrangement with, or provide any non-public information to, any Person (other than Parent or its Representatives) relating to or in connection with a possible Acquisition Transaction; or (c) entertain or accept any proposal or offer from any Person (other than Parent) relating

to a possible Acquisition Transaction. The Company shall promptly (and in any event within 24 hours of receipt thereof) notify Parent orally and in writing of any inquiry, indication of interest, proposal, offer or request for non-public information relating to a possible Acquisition Transaction that is received by any Acquired Company during the Pre-Closing Period, which notice shall include: (i) the identity of the Person making or submitting such inquiry, indication of interest, proposal, offer or request, and the terms and conditions thereof; and (ii) an accurate and complete copy of all written materials provided in connection with such inquiry, indication of interest, proposal, offer or request).

4.5 **Termination of 401(k) Plan.** The Company shall take (or cause to be taken) all actions necessary or appropriate to terminate, effective no later than the day immediately preceding the Closing Date, the AssureRx Health Retirement Plan (the "401(k) Plan") unless Parent, in its sole and absolute discretion, agrees to sponsor and maintain the 401(k) Plan by providing the Company with written notice of such election (an "Election Notice") at least five (5) Business Days prior to the Closing Date. Unless Parent provides an Election Notice to the Company, the Company shall deliver to Parent, prior to the Closing Date, evidence that the Company's board of directors has validly adopted resolutions to terminate the 401(k) Plan (the form and substance of which resolutions shall be reasonably satisfactory to Parent), effective no later than the date immediately preceding the Closing Date. In connection with the termination of the 401(k) Plan, Parent shall permit each Acquired Company employee to make rollover contributions of "eligible rollover distributions" (within the meaning of Section 401(a)(31) of the Code, including all participant loans) in an amount equal to the eligible rollover distribution portion of the account balance distributed to each such Acquired Company employee from the 401(k) Plan to an "eligible retirement plan" (within the meaning of Section 401(a)(31) of the Code) of Parent or any of its Affiliates (the "Parent 401(k) Plan"). In the event that the distributions of assets from the trust of a 401(k) Plan which is terminated is reasonably anticipated to trigger liquidation charges, surrender charges, or other fees to be imposed upon the account of any participant or beneficiary of such terminated plan or upon any Company or plan sponsor, then the Company shall take such actions as are necessary to reasonably estimate the amount of such charges or fees and provide such estimate in writing to Parent prior to the Effective Time.

4.6 **Tail Insurance.** Prior to the Effective Time, the Company shall, at its own expense, purchase through its insurance brokerage (the "Incumbent Brokerage") an extended reporting period endorsement under the Company's existing directors' and officers' liability insurance coverage (the "D&O Tail Policy") for the Acquired Companies' directors and officers, which shall provide such directors and officers with coverage for six (6) years following the Effective Time of not less than the existing coverage under, and have other terms not materially less favorable to, the insured persons than the directors' and officers' liability insurance coverage presently maintained by the Company. Parent shall cause the D&O Tail Policy to be maintained in full force and effect, for its full term, and cause all obligations thereunder to be honored by the Surviving Corporation. Following the Effective Time, Parent shall not take any steps, including the appointment of a different broker, that would prevent the Incumbent Brokerage from representing the Company's existing directors' and officers' for the purposes of the D&O Tail Policy and any claims related thereto throughout the term of the D&O Tail Policy.

4.7 **Director and Officer Liability.** Parent and Merger Sub agree that all rights to exculpation, expense advancement and indemnification for acts or omissions occurring prior to the Effective Time existing as of the date of this Agreement in favor of the individuals who on or prior to the Effective Time were the current and former directors and officers of any Acquired Company or any of their respective Affiliates or any of their predecessors in all of their capacities (including as a stockholder, controlling or otherwise) or who were serving at the request of any Acquired Company as an officer or director of any other corporation, partnership or joint venture, trust, employee benefit plan or other enterprise, including, in each case, the heirs, executors, trustees, fiduciaries and administrators of any

such officer or director (each, an "Indemnified D&O"), as provided in any Acquired Company's Charter Documents or in any agreement made available to Parent, shall survive the Merger and shall continue in full force and effect in accordance with their terms. In addition, for a period of six (6) years following the Effective Time, Parent shall not, and shall cause the Surviving Corporation and its Subsidiaries not to, amend, repeal or otherwise modified in any manner that is less favorable to any Indemnified D&O in any material respect the Charter Documents of the Surviving Corporation and its Subsidiaries in effect immediately following the Effective Time.

**5. Certain Covenants of the Parties.**

5.1 **Filings and Consents.**

**(a)** Each party shall file promptly, but in any event within five (5) Business Days after the date of this Agreement, all notices, reports and other documents required to be filed by such party with any Governmental Authority with respect to the Merger and the other transactions contemplated by this Agreement, and to submit promptly any additional information requested by any such Governmental Authority. Without limiting the generality of the foregoing, the Company and Parent shall, promptly after the date of this Agreement, prepare and file any notifications required under any applicable antitrust or competition laws or regulations in connection with the Merger.

**(b)** The Company and Parent shall respond as promptly as practicable to any inquiries or requests received from any state attorney general, antitrust authority or other Governmental Authority in connection with antitrust or related matters. Subject to the confidentiality provisions of this Agreement, Parent and the Company each shall promptly supply the other with any information which may be required in order to effectuate any filings (including applications) pursuant to (and to otherwise comply with its obligations set forth in) this Section 5.1. Except where prohibited by applicable Legal Requirements or any Governmental Authority, and subject to the confidentiality provisions of this Agreement, the Company and Parent shall: (i) cooperate with the other party with respect to any filings made by the other party in connection with the Merger; (ii) permit the other party to review (and consider in good faith the views of the other party in connection with) any documents before submitting such documents to any Governmental Authority in connection with the Merger; and (iii) promptly provide the other party with copies of all filings, notices and other documents (and a summary of any oral presentations) made or submitted by any Acquired Company with or to any Governmental Authority in connection with the Merger.

**(c)** If any objections are asserted with respect to the Merger or the other transactions contemplated by this Agreement under any antitrust law or if any action, suit or other proceeding is instituted or threatened by any Governmental Authority or any private party challenging the Merger or any other transactions contemplated by this Agreement as violative of any antitrust law or other Legal Requirements, Parent and the Company shall, and shall cause their respective Affiliates to, use reasonable best efforts promptly to resolve such objections; *provided* that nothing in this Agreement shall require any party or any of its Affiliates to (and, without the prior written consent of Parent, no Acquired Company shall) (i) enter into any settlement, undertaking, consent decree, stipulation or agreement with any Governmental Authority in connection with the Merger or the other transactions contemplated by this Agreement, (ii) divest or agree to divest (or cause any of its Subsidiaries or Affiliates or any Acquired Company to divest or agree to divest) any of its respective businesses, product lines or assets, or to agree (or cause any of its Subsidiaries or Affiliates or any Acquired Company to agree) to any limitation or restriction on any of its respective businesses, product lines or assets or (iii) contest any Legal Proceeding relating to the Merger or any of the other transactions contemplated by this Agreement.

**(d)** Subject to the remainder of this Section 5.1, Parent and the Company shall use commercially reasonable efforts to take, or cause to be taken, all actions necessary to consummate the Merger and make effective the other transactions contemplated by this Agreement as promptly as practicable. Without limiting the generality of the foregoing, as soon as practicable after the date of this Agreement, but subject to the remainder of this Section 5.1, each party to this Agreement: (x) shall make all filings (if any) and give all notices (if any) required to be made and given to any party to any Contract in connection with the Merger and the other transactions contemplated by this Agreement; and (y) shall use commercially reasonable efforts to obtain each Consent (if any) required to be obtained pursuant to any applicable Contract by such party in connection with the Merger or any of the other transactions contemplated by this Agreement; *provided*, *however*, that no party to this Agreement or any of its Affiliates shall be required to compensate any Person or offer or grant any accommodation (financial or otherwise) to any Person in connection therewith; *provided*, *further*, that neither the Company, nor any of its Affiliates, shall, without Parent's prior written consent, grant any waiver, make any concession or otherwise amend or alter in any material respect any terms of any Contract in order to obtain any Consent. The Company shall promptly upon its receipt make available to Parent copies of any and all substantive correspondence between the Company or any of its Affiliates and the party to any such Contract (or its agents) relating to any such Consent of the transactions contemplated hereby.

5.2 **Stockholder Consent.**

**(a)** Information Statement. As promptly as practicable (and in any event within five (5) Business Days) after the execution of this Agreement, the Company shall, in accordance with its Charter Documents and applicable Legal Requirements, provide to its stockholders an Information Statement and other appropriate documents in connection with the obtaining of: (i) written consents of the stockholders of the Company in favor of the adoption and approval of this Agreement and approval of the other transactions contemplated by this Agreement; and (ii) waivers by the stockholders of the Company of their appraisal rights in connection with the Merger. The Company shall use commercially reasonable efforts to obtain such written consents and waivers from holders of all of the outstanding shares of Company Capital Stock. The Information Statement shall: (A) include the unanimous recommendation of the board of directors of the Company in favor of the adoption and approval of this Agreement and the approval of the other transactions contemplated by this Agreement; (B) notify the stockholders of the receipt by the Company of the Required Merger Stockholder Vote and their appraisal rights pursuant to Section 262 of the DGCL; and (C) comply with all applicable Legal Requirements. Notwithstanding anything to the contrary contained in this Agreement, the Information Statement and any other materials submitted to the Company's stockholders in connection with the transactions contemplated by this Agreement shall be subject to prior review and reasonable approval by Parent and its advisors.

**(b)** Parachute Payments. Prior to the Closing Date, the Company shall submit to the stockholders of the Company (in a manner reasonably satisfactory to Parent), for approval by stockholders of the Company in accordance with the terms of Section 280G(b)(5)(B) of the Code, a written consent in favor of a single proposal to render the parachute payment provisions of Section 280G inapplicable to any and all payments or benefits that could reasonably be deemed to result, separately or in the aggregate, in the payment of any amount or the provision of any benefit that would, in the absence of such stockholder approval, constitute an "excess parachute payment" within the meaning of Section 280G of the Code (together, the "Section 280G Payments"). The Company agrees that (i) prior to soliciting such stockholder approval, the Company shall deliver to Parent waivers duly executed by each Person who could reasonably be deemed to be entitled to receive any Section 280G Payment, in form and substance reasonably satisfactory to Parent, of such Person's rights to some or all of the Section 280G Payments; and (ii) for each such Person. in the absence of such stockholder approval, no Section 280G

Payments shall be made. The form and substance of all stockholder approval documents contemplated by this Section 5.2(b), including the waivers, shall be subject to the prior review and reasonable approval of Parent, which approval shall not be unreasonable delayed or withheld.

5.3 **Commercially Reasonable Efforts.** Prior to the Closing: (a) the Company shall use commercially reasonable efforts to cause the conditions set forth in Section 7 to be satisfied on a timely basis; and (b) Parent and Merger Sub shall use commercially reasonable efforts to cause the conditions set forth in Section 7.9 to be satisfied on a timely basis.

5.4 **Employee Matters.**

**(a)** For a period of one year following the Closing Date, Parent shall, or shall cause its Subsidiaries (including the Surviving Corporation) to, maintain for employees who continue in the employ of Parent or any of its Subsidiaries (including the Surviving Corporation) following the Closing Date (the "Continuing Employees") (i) base salary or wage rate no less favorable than those provided to the Continuing Employees immediately prior to the Closing, (ii) annual cash incentive compensation that is no less favorable than the cash incentive opportunities provided to similarly situated employees of Parent and its Affiliates (excluding the Continuing Employees), and (ii) (A) through December 31, 2016, welfare benefits that are no less favorable than the compensation and benefits provided to the Continuing Employees immediately prior to the Closing, and (B) after December 31, 2016, welfare benefits that are substantially comparable to the other compensation and benefits provided to similarly situated employees of Parent and its Affiliates (excluding the Continuing Employees), but excluding equity compensation. This Section 5.4 shall not limit the obligation of Parent or any of its Subsidiaries (including the Surviving Corporation) to maintain any compensation arrangement or benefit plan that, pursuant to an existing contract or applicable law, must be maintained for a period longer than one year. No provision of this Agreement shall be construed as a guarantee of continued employment of any Continuing Employee and this Agreement shall not be construed so as to prohibit Parent or any of its Subsidiaries from having the right to terminate the employment of any Continuing Employee, provided that any such termination is effected in accordance with applicable law.

**(b)** From and after the Closing, Parent shall give each Continuing Employee full credit for all purposes (including for purposes of eligibility to participate, level of benefits, early retirement eligibility and early retirement subsidies, vesting and benefit accrual) under any employee benefit plans, arrangements, collective agreements and employment-related entitlements (including under any applicable pension, 401(k), savings, medical, dental, life insurance, vacation, long-service leave or other leave entitlements, post-retirement health and life insurance, termination indemnity, severance or separation pay plans) provided, sponsored, maintained or contributed to by Parent or any of its Subsidiaries for such Continuing Employee's service with the Company or any of its Subsidiaries, and with any predecessor employer, to the same extent recognized by the Company or any of its Subsidiaries as of immediately prior to the Closing, except to the extent such credit would result in the duplication of benefits for the same period of service. Notwithstanding the foregoing, to the extent permitted under applicable law, Parent shall not be required to provide credit for such service for benefit accrual purposes under any employee benefit plan of Parent that is a defined benefit pension plan.

**(c)** Parent shall use commercially reasonable efforts to (i) waive for each Continuing Employee and his or her dependents, any waiting period provision, payment requirement to avoid a waiting period, pre-existing condition limitation, actively-at-work requirement and any other restriction that would prevent immediate or full participation under the welfare plans of Parent or any of its Subsidiaries applicable to such Continuing Employee to the extent such waiting period, pre-existing condition limitation, actively-at-work requirement or other restriction would not have been applicable to

such Continuing Employee under the terms of the welfare plans of the Company and its Subsidiaries, and (ii) give full credit under the welfare plans of Parent and its Subsidiaries applicable to each Continuing Employee and his or her dependents for all co-payments and deductibles satisfied prior to the Closing in the same plan year as the Closing, and for any lifetime maximums, as if there had been a single continuous employer.

**(d)** Nothing in this Section 5.4 shall (i) be construed as an amendment or other modification of any Acquired Company Employee Plan, (ii) give any third party any right to enforce the provisions of this Agreement or (iii) limit the right of Parent, the Acquired Companies or any of their respective Subsidiaries to amend, terminate or otherwise modify any Acquired Company Employee Plan.

**(e)** Parent shall cause the Surviving Corporation to pay the Closing Date Transaction Bonuses and Post-Closing Date Transaction Bonuses in accordance with the terms of the Equity Transition Plan.

5.5 **Provision Respecting Legal Representation; Attorney-Client Privilege.**

**(a)** Each of the parties to this Agreement hereby agrees, on its own behalf and on behalf of its directors, members, partners, officers, employees and Affiliates, that Latham & Watkins LLP and Thompson Hine LLP may serve as counsel to each and any Effective Time Holder and such Effective Time Holder's respective Affiliates (individually and collectively, the "Holder Group"), on the one hand, and the Company, on the other hand, in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (the "Existing Representation"), and that, following consummation of the transactions contemplated hereby, Latham & Watkins LLP (or any successor) and/or Thompson Hine LLP (or any successor) may serve as counsel to the Holder Group or any director, member, partner, officer, employee or Affiliate of the Holder Group, in connection with any litigation, claim or obligation arising out of or relating to this Agreement or the transactions contemplated by this Agreement (any such representation, a "Post-Closing Representation") notwithstanding the Existing Representation, and each of the parties hereto hereby consents thereto and waives any conflict of interest arising therefrom, and each of such parties shall cause any Affiliate thereof to consent to waive any conflict of interest arising from the Existing Representation.

**(b)** From and after the Closing, Parent waives and hereby agrees not to control or assert, and agrees to cause its Affiliates (including the Surviving Corporation) to waive and to not control or assert, any attorney-client privilege, attorney work-product protection or other similar privilege or protection applicable to, or any expectation of client confidence with respect to, (i) any communication between any legal counsel (including Latham & Watkins LLP and/or Thompson Hine LLP), on the one hand, and the Holder Group, on the other hand, regarding the negotiation, execution, and delivery of this Agreement or the transactions contemplated hereby in any Post-Closing Representation (other than any Third-Party Claim), or (ii) any other advice given to the Holder Group by Latham & Watkins LLP and/or Thompson Hine LLP, occurring during the Existing Representation in connection with any Post-Closing Representation, including in connection with a dispute between the Holder Group and one or more of Parent and its Affiliates (the items listed in clauses (i) and (ii) collectively, the "Specified Privileges"), it being the intention of the parties hereto that, notwithstanding anything to the contrary in Section 1.1 or Section 1.2 hereof or Section 259 of the DGCL, the right to waive, assert and otherwise control such Specified Privileges in any Post-Closing Representation (other than any Third Party Claim) shall be (and are hereby) transferred to or retained by (as applicable), and vested solely in, the Holder Group, and shall not pass to or be claimed or used by Parent, except as provided in the last sentence of this Section 5.5(b). Furthermore, Parent (on behalf of itself and its

Affiliates) acknowledges and agrees that any advice given to or communication with the Holder Group shall not be subject to any joint privilege (whether or not the Company also received such advice or communication) and shall be owned solely by the Holder Group. Notwithstanding the foregoing, in the event that a dispute arises between Parent or the Company, on the one hand, and a third party other than the Holder Group, on the other hand, the Company shall (and shall cause its Affiliates to) assert the Specified Privileges on behalf of the Holder Group to prevent disclosure of Privileged Materials to such third party; provided, however, that such privilege may be waived only with the prior written consent of the Securityholders' Agent.

**(c)** All such Specified Privileges, and all books and records and other documents of the Company containing any advice or communication that is subject to any Specified Privileges ("Privileged Materials"), shall be excluded from the Merger, and shall be distributed to the Securityholders' Agent (on behalf of the Holder Group) immediately prior to the Closing with (in the case of such books and records) no copies retained by the Company. Absent the prior written consent of the Securityholders' Agent, neither Parent nor (following the Closing) the Company shall have a right of access to Privileged Materials.

**(d)** Parent hereby acknowledges that it has had the opportunity (including on behalf of its Affiliates) to discuss and obtain adequate information concerning the significance and material risks of, and reasonable available alternatives to, the waivers, permissions and other provisions of this Section 5.5, including the opportunity to consult with counsel other than Latham & Watkins LLP and Thompson Hine LLP. This Section 5.5 shall be irrevocable, and no term of this Section 5.5 may be amended, waived or modified, without the prior written consent of the Securityholders' Agent and each of Latham & Watkins LLP and Thompson Hine LLP.

**6. Tax Matters.**

6.1 **Liability for Taxes.**

**(a)** Indemnification. From and after the Effective Time, each Effective Time Holder shall, severally and not jointly, hold harmless and indemnify each of the Parent Indemnitees from and against such Effective Time Holder's Pro Rata Share of any Damages that are directly or indirectly suffered or incurred at any time by any of the Parent Indemnitees or to which any of the Parent Indemnitees may otherwise directly or indirectly become subject at any time (regardless of whether or not such Damages relate to any Third Party Claim) and that arise directly or indirectly from or as a result of, or are directly or indirectly connected with, without duplication, (1) any breach of, or inaccuracy in, any of the representations or warranties of the Company in Section 2.20, (2) Taxes imposed on any Acquired Company, or for which any Acquired Company may otherwise be liable (including as a transferee or successor, by contract, agreement, by operation of law or otherwise, but excluding Contracts not primarily related to Taxes entered into in the ordinary course of business), for any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on and including the Closing Date, (3) any Transfer Taxes for which the Effective Time Holders are liable pursuant to Section 6.7, and (4) any withholding Tax imposed in connection with the transactions contemplated by this Agreement and any payment thereof, including, for the avoidance of doubt, the employer portion of any payroll and employee withholding Taxes, employment, unemployment insurance, social security, workers' compensation, and other obligations of a similar nature, imposed in connection with any payment made pursuant to this Agreement; *provided*, *however*, in each case, that no Effective Time Holder shall be liable for any Tax Liability to the extent such Tax Liability is taken into account in computing Closing Net Indebtedness Amount or the Net Working Capital Amount.

**(b)** Straddle Period. For purposes of this Agreement, whenever it is necessary to determine the liability for Taxes of any Acquired Company for a Straddle Period, (1) the amount of any Taxes imposed on or calculated by reference to income, gain, receipts, capital, sales, use or payment of wages of an Acquired Company for the period ending on the Closing Date shall be determined based on an interim closing of the books as of the close of business on the Closing Date (and for such purpose, the Taxable period of any partnership or other pass-through entity in which the Acquired Company holds a beneficial interest shall be deemed to terminate at such time); *provided*, *however*, that exemptions, allowances, and deductions calculated on an annual basis, such as depreciation deductions, shall be apportioned between the portion of the Straddle Period ending on the Closing Date and the portion of the Straddle period commencing after the Closing Date as described immediately hereafter in clause (2), and (2) the amount of all other Taxes of the Acquired Company for the portion of any Straddle Period through the and including the Closing Date shall be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction the numerator of which is the number of days in the Straddle Period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period.

**(c)** Controlled Foreign Corporation. For purposes of Section 6.1(a), whenever it is necessary to determine the liability for Taxes of the Company under Section 951 of the Code with respect to any Subsidiary that is of a controlled foreign corporation within the meaning of Section 957 of the Code (a "CFC") attributable to the taxable year or period of such CFC that begins on or before and ends after the Closing Date, the determination of liability for any such Taxes shall be made by assuming that the taxable year or period of the CFC consisted of two taxable years or periods, one which ended at the close of the Closing Date and the other of which began at the beginning of the day following the Closing Date and relevant items of income, gain, deduction, loss or credit of the controlled foreign corporation shall be allocated between such two taxable years or periods on a "closing of the books basis" by assuming that the books of the controlled foreign corporation were closed at the close of the Closing Date.

6.2 **Tax Returns.**

**(a)** Parent shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for any Acquired Company that relate to any Tax period ending on or before the Closing Date which are due after the Closing Date (a "Pre-Closing Tax Return") or Straddle Period. All such Tax Returns shall be prepared in a manner consistent with past practice of the applicable Acquired Company, to the extent permitted by applicable Legal Requirements. At least thirty (30) days prior to the due date (including any extensions) of any such Pre-Closing Tax Return or Straddle Period Tax Return, Parent shall cause a draft copy of such Tax Return to be delivered to the Securityholders' Agent for the Securityholders' Agent's review and comment. Parent shall consider in good faith any and all reasonable comments provided by the Securityholders' Agent with respect to any such Tax Returns to the extent such comments are consistent with past practices of the applicable Acquired Company; *provided* that such reasonable comments are delivered in writing by the Securityholders' Agent to Parent within fifteen (15) days of delivery of the draft Tax Returns by Parent to Securityholders' Agent (the "Tax Comments"). If the Securityholders' Agent does not provide Tax Comments within such period, the amount of Taxes shown to be due and payable on such Tax Return shall be deemed to be accepted and agreed upon, and final and conclusive, for purposes of this Section 6.2(a). If Tax Comments are timely provided by the Securityholders' Agent in accordance with the foregoing provisions, then Parent shall consider in good faith such Tax Comments and the parties shall act in good faith to resolve any dispute prior to the due date of any such Pre-Closing Tax Return or Straddle Period Tax Return. If Parent and the Securityholders' Agent cannot resolve any such disputed Tax Comment, the disputed items shall be referred to a senior Tax partner at the Accounting Firm (the "Tax Arbitrator") for prompt resolution (in

accordance with the provisions of this Section 6.2(a)), whose determination shall be final and conclusive for purposes of this Section 6.2(a). The Tax Arbitrator shall be instructed to use every reasonable effort to complete its services as soon as practicable after such submission. If the Tax Arbitrator is unable to resolve the dispute prior to the due date (including any extensions) of such Tax Returns, Parent shall cause the Tax Comments with respect to which there is no dispute among the parties to be reflected on such Tax Returns, and the parties agree to amend any such Tax Returns to the extent necessary based on the final determination of the Tax Arbitrator with respect to the disputed items. The fees and expenses of the Tax Arbitrator in connection with its work pursuant to this Section 6.2(a) shall be apportioned between the Parent and the Securityholders' Agent (on behalf of the Effective Time Holders) based upon the relative success of each such party's claims as reflected in the determinations made by the Tax Arbitrator. Any and all third-party costs, fees or expenses incurred by Parent, its Affiliates or any Acquired Company in connection with any Pre-Closing Tax Return and fifty percent (50%) of any such fees and expenses in current in connection with any Straddle Period Tax Return, in each case prepared or filed in connection with this Section 6.2(a), shall be considered Damages for which the Parent Indemnitees shall be indemnified and held harmless.

6.3 **Tax Proceedings.**

**(a)** Parent shall notify Securityholders' Agent in writing upon receipt by Parent, any of its Affiliates or, after the Closing Date, the Acquired Companies of notice of any pending federal, state, local or foreign Tax audits or assessments relating to any taxable period ending on or before the Closing Date or to any Straddle Period (the "Tax Proceeding Notice"). The failure to promptly give such Tax Proceeding Notice shall not, however, relieve any Effective Time Holder of its indemnification obligations, except and only to the extent that such Effective Time Holder is actually prejudiced thereby.

**(b)** The Securityholders' Agent shall have the right to participate in or, upon providing written notice to the Parent within fifteen (15) days of receipt of such Tax Proceeding Notice, to assume the defense of any audit, investigation or similar proceeding or claim (a "Tax Proceeding") relating solely to taxable period ending on or before the Closing Date at the Securityholders' Agent's expense (on behalf of the Effective Time Holders) and by the Securityholders' Agent's own counsel; *provided* that (i) Securityholders' Agent shall be obligated to keep Parent reasonably informed of all material developments and events relating to such Tax Proceeding (including promptly forwarding copies to the Parent of any related correspondence, and providing the Parent with an opportunity to review and comment on any material correspondence before the Securityholders' Agent's sends such correspondence to any Tax Authority), (ii) Parent shall have the right, at Parent's expense, to participate in any Tax Proceedings with counsel selected by it, and (iii) Securityholders' Agent's shall not settle, resolve, or abandon such Tax Proceeding without the prior written consent of the Parent (which consent shall not be unreasonably withheld, conditioned or delayed).

**(c)** If the Securityholders' Agent is not entitled to control a Tax Proceeding under Section 6.3(b), fails to give timely and duly written notification to the Parent of its election to defend such Tax Proceeding as provided in this Agreement, fails to diligently defend such Tax Proceeding, or otherwise comply with its obligations in controlling such Tax Proceeding pursuant this Section 6.3, Parent may, without prejudice to its right to indemnification hereunder, assume control of such Tax Proceedings and seek indemnification for any and all Damages based upon, arising from or relating to such Tax Proceedings; *provided* that (i) Parent shall be obligated to keep Securityholders' Agent reasonably informed of all material developments and events relating to such Tax Proceeding (including promptly forwarding copies to the Securityholders' Agent of any related correspondence), (ii) Securityholders' Agent (on behalf of the Effective Time Holders) shall have the right to participate, at its sole expense, in any Tax Proceedings with counsel selected by it, and (iii) Parent shall not and shall not allow any Affiliate thereof to settle, resolve, or abandon such Tax Proceeding without the prior written consent of the Securityholders' Agent (which consent shall not be unreasonably withheld, conditioned or delayed).

**(d)** Parent shall have the sole right to represent each Acquired Company's interests in any Tax Proceedings with respect to any Straddle Period, *provided* that (i) Parent shall be obligated to keep Securityholders' Agent reasonably informed of all material developments and events relating to such Tax Proceeding (including promptly forwarding copies to the Securityholders' Agent of any related correspondence), and (ii) Parent shall not and shall not allow any Affiliate thereof to settle, resolve, or abandon such Tax Proceeding without the prior written consent of the Securityholders' Agent's (which consent shall not be unreasonably withheld, conditioned or delayed).

6.4 **Assistance and Cooperation.** After the Closing Date, each of Securityholders' Agent and Parent shall (and shall cause their respective Affiliates to):

**(a)** timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to sales, transfer and similar Taxes;

**(b)** assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing;

**(c)** cooperate fully in preparing for and defending any audits of, or disputes with taxing authorities regarding, any Tax Returns of any Acquired Company;

**(d)** make available to the other and to any taxing authority as reasonably requested all information, records, and documents relating to Taxes of the Acquired Companies, including any ownership information necessary to determine the presence or absence of an "ownership change" within the meaning of Section 382 of the Code;

**(e)** furnish the other with copies of all correspondence received from any taxing authority in connection with any Tax audit or information request with respect to any such taxable period; *provided*, that Parent shall only be obligated to furnish copies of such correspondence to Securityholders' Agent to the extent such audit or information request relates to Taxes for which the Effective Time Holders may be liable under the terms of this Agreement; and

**(f)** furnish all books and records with respect to Taxes for a period of at least seven (7) years following the Closing Date.

6.5 **Termination of Tax Sharing Arrangements.** Any Tax Sharing Arrangement entered into by any Acquired Company, other than this Agreement, shall be terminated as to each Acquired Company on or prior to the Closing, and after the Closing no Acquired Company shall have any Liability thereunder.

6.6 **Survival, Etc.**

Notwithstanding anything to the contrary in this Agreement (including Section 10), the obligations of the parties set forth in this Section 6 shall survive the Effective Time until the date that is sixty (60) days after the expiration of all applicable statutes of limitations (including any extensions thereof); *provided, however*, that if, at any time on or prior to the expiration date referred to in this sentence, any Parent Indemnitee delivers to the Securityholders' Agent a written notice asserting a claim for recovery under

this Section 6 based on such alleged breach, then the claim asserted in such notice shall survive until such time as such claim is fully and finally resolved. No claim made pursuant to this Section 6 shall be subject to the limitations in Section 10.3 (except for Sections 10.3(f) and 10.3(g)). The obligations of the parties set forth in this Section 6 shall not be subject to any limitation under Section 10.3 (except for Sections 10.3(f) and 10.3(g)).

6.7 **Transfer Taxes.** All transfer, stamp, documentary, sales, use, registration, value-added and other similar Taxes (including all applicable real estate transfer Taxes) incurred in connection with this Agreement and the transactions contemplated hereby ("Transfer Taxes") will be borne by 50% by Parent and 50% by the Securityholders. Parent and the Securityholders' Agent further agree, upon request, to use commercially reasonable efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed in connection with the transactions contemplated hereby.

6.8 **Tax Refunds.** The Effective Time Holders shall be entitled to the amount of any refund (or credit of Taxes claimed in lieu of any refund at the election of Parent or any affiliate thereof after the Closing Date) of any Acquired Company with respect to any Pre-Closing Tax Period (to the extent such Taxes were paid by any Acquired Company prior to the Closing or by the Effective Time Holders pursuant to a claim for indemnification after the Closing) which refund is actually received (or credit is actually recognized) by Parent or its Subsidiaries (including any Acquired Company) after the Closing, net of any cost to Parent and its Affiliates attributable to the obtaining and receipt of such refund or credit, except to the extent such refund or credit arises as the result of a carryback of a loss or other tax benefit from a Tax period (or portion thereof) beginning after the Closing Date. Parent shall pay, or cause to be paid, to the Paying Agent for distribution to the Effective Time Holders any amount to which the Effective Time Holders are entitled pursuant to the prior sentence within five (5) Business Days of the receipt of the applicable refund or claim of such credit by Parent or its Subsidiaries. To the extent requested by the Securityholders' Agent, Parent will reasonably cooperate, at the expense of the Effective Time Holders, with reasonable written requests by the Securityholders' Agent in obtaining such refund or credit, including through the filing of amended Tax Returns for periods ending before or on the Closing Date or refund claims. To the extent such refund or credit is subsequently disallowed or required to be returned to the applicable Tax Authority, the Effective Time Holders agree promptly to repay the amount of such refund or credit, together with any interest, penalties or other additional amounts imposed by such Tax Authority, to Parent.

6.9 **Certain Actions.** Except with the express written consent of the Securityholders' Agent, which consent shall not be unreasonably delayed, conditioned or withheld, Parent shall not (i) make any election for any Subsidiary of the Company under Section 338(g) of the Code or (ii) except in connection with any Tax Proceeding or as otherwise governed by the procedures governing filings of Tax Returns pursuant to Section 6.2, (a) amend any Tax Return of any Acquired Company for any period ending on or before the Closing Date, (b) change any annual Tax accounting period or any period ending on or before the Closing Date, (c) surrender any right to claim a Tax refund for any period ending on or before the Closing Date, or (d) consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment (other than in connection with ordinary course extenuations for filing Tax Returns), in each case to the extent such action could reasonably be expected to result in any increased Tax liability for which the Securityholders would be required to provide indemnification pursuant to Section 6.6 or Section 10 hereof.

6.10 **Coordination.** If there shall be any conflicts between the provisions of this Section 6 and Section 10, the provisions of this Section 6 shall control with respect to Taxes.

6.11 **Tax Treatment of Certain Payments.**

**(a)** The parties hereto acknowledge and agree that, any disbursements from the Escrow to the Effective Time Holders and any Earnout Payments made shall be treated as payments pursuant to an "installment sale" within the meaning of Code Section 453(b) to the greatest extent permitted by applicable Legal Requirements.

**(b)** The parties hereto acknowledge and agree that any payments made to any party pursuant to Section 1.10(c) and any indemnification payments made in respect of any Damages shall constitute an adjustment of the Purchase Price for Tax purposes and shall be treated as such by the parties hereto on their Tax Returns to the greatest extent permitted by applicable Legal Requirements, subject to the provisions of Section 6.11(c).

**(c)** For the avoidance of doubt, the parties shall use commercially reasonable efforts to sustain the tax treatment described in this Section 6.11 in any subsequent Tax audit or other administrative Tax Proceeding; *provided*, *however*, that no party shall be required to litigate before any court any proposed deficiency or adjustment by any Tax Authority challenging such Tax treatment.

**7. Conditions Precedent to Obligations of Parent and Merger Sub.** The obligations of Parent and Merger Sub to cause the transactions contemplated by this Agreement to be consummated are subject to the satisfaction (or waiver by Parent), at or prior to the Closing, of each of the following conditions:

7.1 **Accuracy of Representations.** (a) Each of the representations and warranties made by the Company set forth in Sections 2.1 (Organizational Matters), 2.4 (Authority; Binding Nature of Agreement; Inapplicability of Anti-takeover Statutes), 2.30 (Vote Required) and 2.31 (Brokers) of this Agreement shall be accurate in all respects as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date; (b) each of the representations and warranties made by the Company set forth in Sections 2.3 (Capital Structure) of this Agreement shall be accurate in all material respects as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (other than any such representations and warranties which by their terms are made as of a specific earlier date, which shall have been accurate in all material respects as of such earlier date), and (c) each of the representations and warranties made by the Company in this Agreement (other than those set forth in Sections 2.1 (Organizational Matters), 2.3 (Capital Structure), 2.4 (Authority; Binding Nature of Agreement; Inapplicability of Anti-takeover Statutes), 2.30 (Vote Required) and 2.31 (Brokers)) shall be accurate as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (other than any such representations and warranties which by their terms are made as of a specific earlier date, which shall have been accurate in all respects as of such earlier date, and except where the failure of representations and warranties referenced in this clause (c) to be true and correct would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect); *provided*, *however*, that, in the case of clauses (b) and (c), for purposes of determining the accuracy of such representations and warranties, all materiality, Material Adverse Effect and similar qualifications limiting the scope of such representations and warranties shall be disregarded.

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

7.3 **Other Deliveries.** Parent shall have received the items to be delivered pursuant to Section 1.3(b).

7.4 **Antitrust Clearance.** Any waiting period (and any extension thereof) applicable to the Merger under the HSR Act shall have been terminated or shall have expired.

7.5 **Stockholder Approval.** This Agreement shall have been duly adopted and approved by the Required Merger Stockholder Vote. The number of shares of Company Capital Stock that constitute (or that are eligible to become as a result of such holder's delivery of a written demand for appraisal in accordance with Section 262 of the DGCL) Dissenting Shares shall be less than five percent (5%) of the Company Capital Stock outstanding immediately prior to the Closing.

7.6 **Officer's Certificate.** Parent shall have received a certificate duly executed on behalf of the Company by the chief executive officer of the Company and containing the representation and warranty of the Company that the conditions set forth in Sections 7.1, 7.2 and 7.5 have been duly satisfied (the "Company Closing Certificate").

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

7.8 **No Legal Proceedings.** (a) No Governmental Authority shall have commenced or threatened to commence any Legal Proceeding: (i) challenging the Merger or any of the other transactions contemplated by this Agreement or seeking the recovery of a material amount of Damages in connection with the Merger or any of the other transactions contemplated by this Agreement; (ii) seeking to prohibit or limit the exercise by Parent of any material right pertaining to its ownership of stock of Merger Sub or any of the Acquired Companies; (iii) that may have the effect of preventing or making illegal the Merger; or (iv) seeking to compel any of the Acquired Companies, Parent or any Affiliate of Parent to dispose of or hold separate any material assets as a result of the Merger or any of the other transactions contemplated by this Agreement, and (b) with the exception of any Dissenting Shares, no other Person shall have commenced or threatened to commence any Legal Proceeding seeking the recovery of a material amount of Damages in connection with the Merger or any of the other transactions contemplated by this Agreement.

**8. Conditions Precedent to Obligations of the Company.** The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver), at or prior to the Closing, of the following conditions:

8.1 **Accuracy of Representations.** (a) Each of the representations and warranties made by Parent set forth in Sections 3.1 (Organization and Standing), 3.2 (Authority; Binding Nature of Agreement) and 3.4 (Brokers) of this Agreement shall be accurate in all respects as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date; and (b) each of the representations and warranties made by Parent in this Agreement (other than those set forth in Sections 3.1 (Organization and Standing), 3.2 (Authority; Binding Nature of Agreement) and 3.4 (Brokers)) shall be accurate as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date, other than representations and warranties which by their terms are made as of a specific date, which shall have been accurate in all material respects as of such date, except where the failure of representations and warranties referenced in this clause (b) to be true and correct would not reasonably be expected to result, individually or in the aggregate, in a material adverse effect on the ability of Parent or Merger Sub to consummate the transactions contemplated by this agreement; *provided*, *however*, that, in

the case of each of the foregoing clauses (a) and (b), for purposes of determining the accuracy of such representations and warranties, all materiality and similar qualifications limiting the scope of such representations and warranties shall be disregarded.

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

8.3 **Other Deliveries.** The Company shall have received the items to be delivered pursuant to Section 1.3(c).

8.4 **Antitrust Clearance.** Any waiting period (and any extension thereof) applicable to the Merger under the HSR Act shall have been terminated or shall have expired.

8.5 **Stockholder Approval.** This Agreement shall have been duly adopted and approved by the Required Merger Stockholder Vote.

8.6 **Officer's Certificate.** The Company shall have received a certificate duly executed on behalf of Parent by an officer of Parent and containing the representation and warranty of Parent that the conditions set forth in Sections 8.1 and 8.2 have been satisfied (the "Parent Closing Certificate").

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

**9. Termination.**

9.1 **Termination Events.** This Agreement may be terminated prior to the Closing (whether before or after the adoption and approval of this Agreement by the Company's stockholders):

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

**(b)** by either Parent or the Company, if the Closing has not taken place on or before 5:00 p.m. (Eastern time) on the date that is two (2) months following the date of this Agreement (the "End Date"); *provided*, *however*, that neither Parent nor the Company shall be permitted to terminate this Agreement pursuant to this Section 9.1(b) if the failure to consummate the Merger by the End Date results from, or is caused by, a material breach by such party of any of its representations, warranties, covenants or agreements contained herein;

**(c)** by Parent or the Company if: (i) a court of competent jurisdiction or other Governmental Authority shall have issued a final and nonappealable Order, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger; or (ii) there shall be any applicable Legal Requirement enacted, promulgated, issued or deemed applicable to the Merger by any Governmental Authority that would make consummation of the Merger illegal; *provided*, *however*, that both Parent and the Company shall work together in good faith and use commercially reasonable efforts to oppose such actions as specified in the preceding clauses (i) and (ii).

**(d)** by Parent if: (i) any of the representations and warranties of the Company contained in this Agreement shall be inaccurate as of the date of this Agreement, or shall have become inaccurate as of a date subsequent to the date of this Agreement, such that the condition set forth in Section 7.1 would not be satisfied; (ii) any of the covenants of the Company contained in this Agreement shall have been breached such that the condition set forth in Section 7.2 would not be satisfied; or (iii) any Material Adverse Effect shall have occurred (it being understood that Parent may not terminate this Agreement pursuant to this clause (d) if Parent is then in breach of this Agreement); *provided, however*, that, in the case of clauses "(i)" and "(ii)" only, if an inaccuracy in any of the representations and warranties of the Company or a breach of a covenant by the Company is curable by the Company through the use of reasonable efforts within fifteen (15) days after Parent notifies the Company in writing of the existence of such inaccuracy or breach (the "Company Cure Period"), then Parent may not terminate this Agreement under this Section 9.1(d) as a result of such inaccuracy or breach prior to the expiration of the Company Cure Period, provided the Company, during the Company Cure Period, continues to exercise reasonable efforts to cure such inaccuracy or breach (it being understood that Parent may not terminate this Agreement pursuant to this Section 9.1(d) with respect to such inaccuracy or breach if such inaccuracy or breach is cured prior to the expiration of the Company Cure Period);

**(e)** by the Company if: (i) any of Parent's representations and warranties contained in this Agreement shall be inaccurate as of the date of this Agreement, or shall have become inaccurate as of a date subsequent to the date of this Agreement, such that the condition set forth in Section 8.1 would not be satisfied; or (ii) if any of Parent's covenants contained in this Agreement shall have been breached such that the condition set forth in Section 8.2 would not be satisfied (it being understood that Company may not terminate this Agreement pursuant to this clause (e) if the Company is then in breach of this Agreement); *provided*, *however*, that if an inaccuracy in any of Parent's representations and warranties or a breach of a covenant by Parent is curable by Parent through the use of reasonable efforts within fifteen (15) days after the Company notifies Parent in writing of the existence of such inaccuracy or breach (the "Parent Cure Period"), then the Company may not terminate this Agreement under this Section 9.1(e) as a result of such inaccuracy or breach prior to the expiration of the Parent Cure Period, provided Parent, during the Parent Cure Period, continues to exercise reasonable efforts to cure such inaccuracy or breach (it being understood that the Company may not terminate this Agreement pursuant to this Section 9.1(e) with respect to such inaccuracy or breach if such inaccuracy or breach is cured prior to the expiration of the Parent Cure Period); or

**(f)** by Parent if the Required Merger Stockholder Vote is not obtained within twenty-four (24) hours after the execution of this Agreement.

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

9.3 **Effect of Termination.** If this Agreement is terminated pursuant to Section 9.1, all further obligations of the parties under this Agreement shall terminate; *provided*, *however*, that: (a) neither the Company nor Parent shall be relieved of any obligation or Liability arising from any willful breach by such party of any provision of, contained in this Agreement; (b) the parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in Section 11; and (c) the parties shall, in all events, remain bound by and continue to be subject to Sections 11.16 and 11.17.

**10. Indemnification, Etc.**

10.1 **Survival of Representations, Covenants, Etc.**

**(a)** General Survival. Subject to Sections 10.1(b) and 10.1(c), the representations and warranties made in this Agreement, the Company Closing Certificate and the Parent Closing Certificate (in each case other than the Specified Representations and the representations and warranties made by Parent set forth in Sections 3.1 (Organization and Standing), 3.2 (Authority; Binding Nature of Agreement) and 3.4 (Brokers) (such representations and warranties, together with the Specified Representations, the "Fundamental Representations")) shall survive the Effective Time until 11:59 pm (Eastern time) on the date that is eighteen (18) months following the Closing Date (the "Expiration Date"); *provided*, *however*, that if, at any time on or prior to the Expiration Date, any Indemnitee delivers a written notice in accordance with the terms hereof, alleging the existence of an inaccuracy in or a breach of any of such representations and warranties and asserting a claim for recovery under Section 10.2 based on such alleged inaccuracy or breach, then the claim asserted in such notice shall survive the Expiration Date until such time as such claim is fully and finally resolved.

**(b) Fundamental Representations.** Notwithstanding anything to the contrary contained in Section 10.1(a), but subject to Section 10.1(c), the Fundamental Representations shall survive the Expiration Date until the date that is sixty (60) days after the expiration of all applicable statutes of limitations (including any extensions thereof); *provided*, *however*, that if, at any time on or prior to the expiration of all applicable statutes of limitation referred to in this sentence, any Indemnitee delivers a written notice in accordance with the terms hereof, alleging the existence of an inaccuracy in or a breach of any Fundamental Representation and asserting a claim for recovery under Section 10.2 based on such alleged inaccuracy or breach, then the claim asserted in such notice shall survive until such time as such claim is fully and finally resolved.

**(c)** Fraud. Notwithstanding anything to the contrary contained in Section 10.1(a) or Section 10.1(b), the limitations set forth in Sections 10.1(a) and 10.1(b) shall not apply in the event of any fraud (whether on the part of the Effective Time Holder against whom liability is being asserted, on the part of any other Effective Time Holder, on the part of any Acquired Company, Parent or Merger Sub or on the part of any Representative of any Acquired Company, Parent or Merger Sub).

10.2 **Indemnification.**

**(a)** Indemnification of Parent Indemnitees. From and after the Effective Time (but subject to Section 10.1), each Effective Time Holder (jointly and severally to the extent of the Indemnity Escrow Amount and severally and not jointly in accordance with such Effective Time Holder's Pro Rata Share of any Damages in excess of the Indemnity Escrow Amount), shall indemnify, defend and hold harmless the Parent Indemnitees from and against any Damages that are directly or indirectly suffered or incurred at any time by any of the Parent Indemnitees (regardless of whether or not such Damages relate to any Third Party Claim) and that arise directly or indirectly from or as a result of, or are directly or indirectly related to:

**(i)** any inaccuracy in or breach of (or any Third Party Claim alleging facts that, if true, would be an inaccuracy in or breach of) any representation or warranty made by the Company in this Agreement or in the Company Closing Certificate (in each case, without giving effect to any materiality, Material Adverse Effect or similar qualifications limiting the scope of such representation or warranty, other than with respect to Section 2.7(a) or any Specified Representations);

**(ii)** regardless of the disclosure of any matter set forth in the Disclosure Schedules, any inaccuracy in any information set forth in the Merger Consideration Certificate, including any failure to properly calculate the Company Transaction Expenses, the Closing Net Indebtedness Amount, the Purchase Price or the Per Share Amount;

**(iii)** any breach of any covenant or obligation of the Company or the Securityholders' Agent in this Agreement required to be performed prior to the Effective Time, or any breach of any covenant or obligation of any Effective Time Holder or the Securityholders' Agent in this Agreement required to be performed at or after the Effective Time; provided, that no Effective Time Holder shall be liable for any breach by another Effective Time Holder;

**(iv)** regardless of the disclosure of any matter set forth in the Disclosure Schedules (other than Schedule 2.3), any claim asserted or held by any current, former or alleged securityholder of any Acquired Company: (A) relating to this Agreement, any other agreement entered into in connection with this Agreement, the Merger or any of the other transactions contemplated hereby or thereby; (B) alleging any ownership of, interest in or right to acquire any shares or other securities of any Acquired Company that is not specifically disclosed in Schedule 2.3; or (C) alleging that such current, former or alleged securityholder is entitled to receive any payment or consideration as a result of the Merger with respect to any shares of Company Capital Stock, Company Options or warrants to purchase Company Capital Stock held by such securityholder other than the payments to holders of Company Capital Stock, Company Options and Company Warrants contemplated by this Agreement;

**(v)** regardless of the disclosure of any matter set forth in the Disclosure Schedules, any claim or right asserted or held by any person who is or at any time was an officer, director, employee or agent of any Acquired Company (against the Surviving Corporation, against Parent, against any Affiliate of Parent or against any other Person) involving a right or entitlement or an alleged right or entitlement to indemnification, reimbursement of expenses or any other relief or remedy (under the Charter Documents, under any indemnification agreement or similar Contract, under any applicable Legal Requirement or otherwise) owed by an Acquired Company with respect to any act or omission on the part of such person or any event or other circumstance that arose, occurred or existed at or prior to the Effective Time;

**(vi)** regardless of the disclosure of any matter set forth in the Disclosure Schedules, the case entitled *United States of America ex rel. Gordon Grant Bachman v. Healthcare Liason Professionals, Inc. d/b/a/ US Physician Home Visits, et al.* or any related Legal Proceedings; provided that the defense of such case shall be handled in accordance with the procedures set forth in Section 10.7;

**(vii)** regardless of the disclosure of any matter set forth in the Disclosure Schedules, the assertion, commencement or threat of, or reservation of right with respect to, any Third Party Claim arising from or relating to the CMS Voluntary Self-Disclosure as disclosed in Schedule 2.13 on or before the Expiration Date; provided that the defense of such case shall be handled in accordance with the procedures set forth in Section 10.7;

**(viii)** the exercise by any stockholder of the Company of such stockholder's appraisal rights under the DGCL, including all costs and expenses incurred by the Company or Parent in connection with any Legal Proceeding or settlement in connection therewith (it being understood that if a final determination of the fair value of any Dissenting Shares is made by a court of competent jurisdiction in connection with any such exercise of appraisal rights, then the only portion of such fair value to be included in calculation of the Damages incurred as a result of such exercise is the amount, if any, by which such fair value exceeds what otherwise would have been payable by Parent with respect to such Dissenting Shares in accordance with Section 1.5 hereof had they not been Dissenting Shares);

**(ix)** any loss of a deduction by Parent, the Acquired Companies or any of their Subsidiaries pursuant to Section 280G, or the incurrence by Parent, the Acquired Companies or any of their Subsidiaries of Tax penalties and/or interest related to any failure to report or withhold excise Tax amounts under Section 4999 of the Code, in each case as a result of (1) payment of Section 280G Payments by any Acquired Company absent 280G Approval, or (2) failure of any 280G Approval obtained with respect to Section 280G Payments to satisfy all applicable requirements of Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder, including Q-7 of Section 1.280G-1 of such Treasury Regulations; or (B) any obligation of any Acquired Company in effect prior to the Closing to provide a gross-up payment for any excise Taxes under Section 4999 of the Code related to Section 280G Payments;

**(x)** regardless of the disclosure of any matter set forth in the Disclosure Schedules (other than Schedule 2.3), any claim asserted by any Person party to a Change in Control Agreement that such Person is entitled to severance, benefits continuation or any other rights thereunder; provided that no Parent Indemnitee shall be entitled to indemnification under this clause (x) if such Person entered into an agreement in form and substance acceptable to Parent prior to the Effective Time in which such Person agreed to terminate such Change in Control Agreement and release the Company from any obligations thereunder; and provided further that the Parent Indemnitees' indemnification under this clause (x) shall be limited to the difference between (1) the cost to the Surviving Corporation of providing the severance, benefits continuation or any other rights claimed under the Change in Control Agreement by such Person *minus* (2) the cost Parent or the Surviving Corporation would have incurred for severance, benefits continuation and other rights had such Person entered into the new agreement proposed by Parent prior to the Effective Time and become eligible for such amounts; or

**(xi)** regardless of the disclosure of any matter set forth in the Disclosure Schedules, any claim for recoupment, reimbursement, or refund of any Medicare reimbursement for GeneSight testing which was reimbursed prior to the Effective Time where the basis for such claim is that the referring provider was not eligible to refer the service billed; *i.e.*, such testing was not ordered by a psychiatric physician.

**(b)** each Joinder Holder severally and not jointly shall indemnify, defend and hold harmless the Parent Indemnitees from and against any and all Damages suffered, sustained or incurred by any such Parent Indemnitee Person, whether or not involving a Third Party Claim, caused by, in connection with, as a result of or arising out of:

**(i)** any inaccuracy in or breach of (or any Third Party Claim alleging facts that, if true, would be an inaccuracy in or breach of) any of the representations or warranties made by such Joinder Holder in his, her or its Joinder Agreement, Warrant Surrender Agreement or Option Termination Agreement or in any other agreement entered into in connection with this Agreement to which he, she or it is a party; and

**(ii)** any breach of or failure by such Joinder Holder to perform any covenant or agreement of such Joinder Holder provided for in his, her or its Joinder Agreement, Warrant Surrender Agreement or Option Termination Agreement;

provided, that no Joinder Holder shall be liable for any inaccuracy, breach or failure to perform by another Joinder Holder.

**(c)** Damage to Parent. The parties acknowledge and agree that, if the Surviving Corporation or any Acquired Company suffers or incurs any Damages as a result of or in connection with any inaccuracy in or breach of any representation, warranty, covenant or obligation, then (without limiting any of the rights of the Surviving Corporation or any Acquired Company as an Parent Indemnitee) Parent shall also be deemed, by virtue of its ownership of the stock of the Surviving Corporation or any Acquired Company, to have incurred Damages as a result of and in connection with such inaccuracy or breach.

**(d)** Calculation of Damages. For purposes of determining the amount of any Damages resulting from or in connection with the breach of any representation or warranty made by the Company or any Joinder Holder, such representations shall be read as though none of them were subject to materiality, Material Adverse Effect, or similar materiality qualifications, other than with respect to Section 2.7(a).

**(e)** Indemnification by Parent. From and after the Effective Time (but subject to Section 10.1), Parent shall hold harmless and indemnify each of the Holder Indemnitees from and against any Damages that are directly or indirectly suffered or incurred at any time by any of the Holder Indemnitees (regardless of whether or not such Damages relate to any Third Party Claim) and that arise directly or indirectly from or as a result of, or are directly or indirectly related to:

**(i)** any inaccuracy in or breach of (or any Third Party Claim alleging facts that, if true, would be an inaccuracy in or breach of) any representation or warranty made by Parent in this Agreement or in the Parent Closing Certificate (in each case, without giving effect to any materiality or similar qualifications limiting the scope of such representation or warranty); and

**(ii)** any breach of any covenant or obligation of Parent or Merger Sub in this Agreement.

10.3 **Limitations.**

**(a)** De Minimis. With respect to the matters described in Sections 10.2(a)(i) and 10.2(e)(i) (other than with respect to any breach or inaccuracy of any Fundamental Representation or with respect to fraud), no individual item of Damages may be submitted by any Indemnitee, nor shall any Indemnitee be indemnified hereunder against any Damages in respect of such individual item of Damages, unless such individual item of Damages (it being understood that any Damages arising out of the same or series of related facts and circumstances shall be aggregated) to be paid out in respect of such individual item exceeds $100,000.

**(b)** Deductible. Subject to Section 10.3(c), (i) no Parent Indemnitee shall be entitled to any indemnification payment pursuant to Section 10.2(a)(i) or 10.2(a)(xi) and (ii) no Holder

Indemnitee shall be entitled to any indemnification payment pursuant to Section 10.2(e)(i) for any inaccuracy in or breach of any representation or warranty in this Agreement until such time as the total amount of all Damages (including the Damages arising from such inaccuracy or breach and all other Damages arising from any other inaccuracies or breaches of any representations or warranties) that have been directly or indirectly suffered or incurred by any one or more of such Parent Indemnitees or Holder Indemnitees, as applicable, exceeds $1,250,000 in the aggregate (the "Deductible Amount"). If the total amount of such Damages pursuant to Section 10.2(a)(i) and Section 10.2(a)(xi), on the one hand, or Section 10.2(e)(i), on the other hand, exceeds the Deductible Amount, then the Parent Indemnitees or Holder Indemnitees, as applicable, shall be entitled to be indemnified against and compensated and reimbursed for only the portion of such Damages exceeding the Deductible Amount.

**(c)** Applicability of Deductible. The limitations set forth in Section 10.3(b) shall not apply (and shall not limit the indemnification or other obligations of any Effective Time Holder or Parent): (i) in the event of fraud (whether on the part of any Effective Time Holder, any Acquired Company, Parent or Merger Sub or any Representative of any Acquired Company, Parent or Merger Sub); or (ii) to inaccuracies in or breaches of any of the Fundamental Representations.

**(d)** Indemnification Cap. Subject to Section 10.3(f), (i) recourse by the Parent Indemnitees to the Indemnity Escrow shall be the Parent Indemnitees' sole and exclusive remedy under this Agreement for monetary Damages resulting from the matters referred to in Section 10.2(a)(i) and (ii) the aggregate amount for which the Parent Indemnitees shall be entitled to indemnification payments pursuant to Section 10.2(a)(i) shall not exceed the sum of the Initial Indemnity Escrow Deposit plus such additional amounts as are deposited into the Indemnity Escrow pursuant to Section 1.11(c).

**(e)** Set Off. Subject to the limitations and procedures set forth in this Section 10, Parent may set off, deduct or retain any amount due to the Effective Time Holders in respect of any claim for indemnification against Effective Time Holders pursuant to this Agreement against any Earnout Payments that Parent may be obliged to make (or procure to be made) to the Effective Time Holders pursuant to this Agreement; provided further that the Parent Indemnitees shall first seek recovery from the Indemnity Escrow or the Accelerable Escrow (in the case of Effective Time Holders who have not delivered a Joinder Agreement, Warrant Surrender Agreement or Option Termination Agreement, as the case may be, prior to Parent's becoming obligated to make the payment subject to such set off, deduction or retention) (but for such recovery from the Accelerable Escrow, the maximum amount of recovery shall be equal to the lesser of (X) the amount of money then remaining in the Accelerable Escrow and (Y) (i) the amount subject to such set off *multiplied by* (ii) a fraction, of which (A) the numerator is the amount of money in the Accelerable Escrow Account due to those Effective Time Holders who did not deliver Joinder Agreements, Warrant Surrender Agreements or Option Termination Agreements to Parent immediately prior to the time that such set-off, reduction or retention is sought by Parent; and (B) the denominator is the Purchase Price).

**(f)** Applicability of Indemnification Cap; Aggregate Indemnification Cap.

**(i)** The limitations set forth in the first sentence of Section 10.3(d) shall not apply (and shall not limit the indemnification or other obligations of any Effective Time Holder): (A) in the event of fraud (whether on the part of any Effective Time Holder, any Acquired Company or any Representative of any Acquired Company); (B) to inaccuracies in or breaches of any of the Specified Representations; or (C) to any of the matters to which Section 6 applies. Each Effective Time Holder shall, severally and not jointly (based on such Effective Time Holder's Pro Rata Share), indemnify and hold harmless each Parent Indemnitee from and against any Damages arising directly or indirectly from, resulting from, or directly or indirectly

related to (W) fraud (whether on the part of any Effective Time Holder, any Acquired Company or any Representative of any Acquired Company); (X) inaccuracies in or breaches of any of the Specified Representations; (Y) any of the matters to which Section 6 applies or (Z) any of the matters referred to in Sections 10.2(a)(ii) through (viii), inclusive; provided, that no Effective Time Holder shall be liable for any fraud, inaccuracy, breach or failure to perform by another other Effective Time Holder.

**(ii)** Notwithstanding anything to the contrary in this Agreement (except for Section 11.3), in no event shall any Effective Time Holder be liable to the Parent Indemnitees for Damages, whether under this Section 10 or pursuant to any Joinder Agreement, Warrant Surrender Agreement or Option Termination Agreement (i) in excess of such Effective Time Holder's Pro Rata Share of such Damages or (ii) in excess of the Merger Consideration actually received by such Effective Time Holder. Subject to Section 11.3, the total amount of indemnification payments that Parent can be required to make to the Holder Indemnitees pursuant to Section 10.1(d) shall be limited to the Merger Consideration.

**(g)** Determination of Damages Amount.

**(i)** The amount of Damages subject to indemnification pursuant to Section 10.2 shall be reduced by any insurance proceeds, indemnification payments, contribution payments, reimbursements or other recoveries previously received by an Indemnitee (or any of its Affiliates) with respect to such Damages (net of any deductible or co-payment and all out of pocket costs related to such recovery and net of any insurance premium increases attributable to such insurance recovery). If any insurance proceeds, indemnification payments, contribution payments, reimbursements or other recoveries are subsequently recovered by an Indemnitee (or any of its Affiliates) after payment has been made by Parent or the Effective Time Holders, as applicable, in accordance with this Section 10 with respect to the Damages to which such insurance recoveries relate, then the Indemnitee shall remit or cause to be remitted to Parent or the Effective Time Holders, as applicable, such insurance recoveries (net of any deductible or co-payment and all out of pocket costs related to such recovery); provided that in no event shall any Indemnitee have any obligation hereunder to remit any portion of such insurance recoveries in excess of the indemnification payment or payments actually received by such Indemnitee with respect to such Damages.

**(ii)** Without limiting the effect of any other limitation contained in this Section 10, for purposes of computing the amount of any Damages incurred by any Indemnitee under this Section 10 or Section 6.1, there shall be deducted an amount equal to the net amount of any Tax benefit actually realized in connection with such Damages on or before the year following the year when such Damages were incurred, calculated on a with and without basis.

**(iii)** Notwithstanding anything herein to the contrary, no Parent Indemnitee shall be entitled to indemnification pursuant to this Section 10 or Section 6 for any Damages resulting from, or relating or attributable to, any Tax attribute of any Acquired Company, including but not limited to any net operating loss, any net operating loss carryover, any Tax credit, any Tax credit carryover or any other Tax attribute of any Acquired Company which may be affected in any way by the acquisition of control under the applicable Legal Requirements, or the determination that any such Tax attribute is subject to any limitation on its use under the applicable Legal Requirements.

10.4 **No Contribution.** Each Effective Time Holder waives, and acknowledges and agrees that such Effective Time Holder shall not have and shall not exercise or assert (or attempt to exercise or assert), any right of contribution, right of indemnity or advancement of expenses or other right or remedy against the Surviving Corporation or any Acquired Company in connection with any indemnification obligation or any other Liability to which such Effective Time Holder may become subject under or in connection with this Agreement or any other agreement, document or instrument delivered to Parent in connection with this Agreement. Effective as of the Closing, the Securityholders' Agent, on behalf of itself and each Effective Time Holder, and each Effective Time Holder expressly waives and releases any and all rights of subrogation, contribution, advancement, indemnification or other claim against Parent, the Surviving Corporation or any Acquired Company.

10.5 **Claim Procedures.** Any claim for indemnification pursuant to Section 10 (and, at the option of any Indemnitee, any claim based upon fraud) shall be brought and resolved exclusively as follows:

**(a)** If any Indemnitee has or claims in good faith to have incurred or suffered, or believes in good faith that it may incur or suffer, Damages for which it is or may be entitled to indemnification under Section 6 or this Section 10 or for which it is or may otherwise be entitled to a monetary remedy relating to this Agreement, the Merger or any of the transactions contemplated hereby or thereby, such Indemnitee may deliver a claim notice (a "Claim Notice") to the Securityholders' Agent or Parent as applicable. Each Claim Notice shall: (i) contain a brief description of the facts and circumstances supporting the Indemnitee's claim; and (ii) if practicable, contain a non-binding, preliminary, good faith estimate of the amount to which the Indemnitee might be entitled.

**(b)** After the giving of any Claim Notice pursuant hereto, the amount of indemnification to which an Indemnitee shall be entitled under Section 6 or this Section 10 shall be determined (i) by the written agreement between the Indemnitee and the Securityholders' Agent or Parent, as applicable, (ii) by a final judgment or decree of any court of competent jurisdiction or (iii) by any other means to which the Indemnitee and the Securityholders' Agent or Parent, as applicable, shall agree. The judgment or decree of a court shall 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.

**(c)** In the event that any Parent Indemnitee is determined pursuant to this Section 10.5 to be entitled to indemnification, such Parent Indemnitee shall be entitled to a distribution from the Indemnity Escrow in an amount equal to the Damages incurred or suffered in connection therewith.

10.6 **Release from Indemnity Escrow and Accelerable Escrow.**

**(a)** Parent will notify the Securityholders' Agent in writing of the amount that Parent determines in good faith to be necessary to satisfy all claims for indemnification that have been asserted, but not resolved on or prior to 11:59 p.m. (Eastern time) on the date that is eighteen (18) months following the Closing Date (the "Indemnity Escrow Release Date") (each such claim an "Indemnity Escrow Continuing Claim" and such amount, the "Indemnity Escrow Retained Amount"). Subject to Section 10.6(c), within three (3) Business Days following the Indemnity Escrow Release Date, Parent and Securityholders' Agent shall instruct the Escrow Agent to release from the Indemnity Escrow an amount in the aggregate equal to (A) the Indemnity Escrow Amount *minus* (B) any amounts released to the Parent Indemnitees from the Indemnity Escrow prior to such date *minus* (C) any amounts paid pursuant to the Post-Closing Date Transaction Bonuses and payable as a result of such release from the

Indemnity Escrow, *minus* (D) the Indemnity Escrow Retained Amount as of such date, for distribution to each participating Effective Time Holder in accordance with each such Effective Time Holder's aggregate Further Distribution Per Share Amount of such portion of the Indemnity Escrow Amount being released to the Effective Time Holders, it being acknowledged and agreed that such amount shall be released to the Paying Agent for distribution to such Effective Time Holders.

**(b)** Upon the full and final resolution of all Continuing Claims, any Indemnity Escrow Retained Amounts in the Indemnity Escrow, together with any additional amounts deposited into the Indemnity Escrow after the Indemnity Escrow Release Date pursuant to Section 1.11(c), shall be distributed to the Effective Time Holders, less any amounts paid pursuant to the Post-Closing Date Transaction Bonuses and payable as a result of such distribution, in accordance with the procedures set forth in Section 10.6(a).

**(c)** With respect to any amount to be released from the Indemnity Escrow to the Effective Time Holders pursuant to this Section 10.6(c): (i) if any former holder of Outstanding Capital Stock has not executed and delivered a properly completed Letter of Transmittal and surrendered such Effective Time Holder's Company Stock Certificate in accordance with Section 1.9(b) (collectively, the "Payment Conditions") prior to the date of any scheduled release from the Indemnity Escrow, then any amount that would otherwise be released to such Effective Time Holder shall be held by the Paying Agent, without interest, until such holder satisfies all of such Effective Time Holder's applicable Payment Conditions; (ii) amounts to be released from the Indemnity Escrow to be distributed to each such Effective Time Holder shall be deemed to be the product of (A) the aggregate amount to be released from the Indemnity Escrow to such Effective Time Holder; *multiplied by* (B) such Effective Time Holder's Pro Rata Share (excluding all shares of Company Preferred Stock that are designated as "Series D Preferred Stock" and shares of Series D Preferred Stock subject to Company Warrants); and (iii) each distribution to be made from the Indemnity Escrow with respect to amounts to be distributed in respect of an Effective Time Holder's Fully Diluted Shares of Company Capital Stock (excluding all shares of Company Preferred Stock that are designated as "Series D Preferred Stock" and shares of Series D Preferred Stock subject to Company Warrants) shall be effected in accordance with the payment delivery instructions set forth in such Effective Time Holder's Letter of Transmittal, Warrant Surrender Agreement or Option Termination Agreement.

**(d)** Parent will notify the Securityholders' Agent in writing of the amount that Parent determines in good faith to be necessary to satisfy all claims for indemnification (other than pursuant to Section 10.2(a)(i)) that have been asserted, but not resolved on or prior to 11:59 p.m. (Eastern time) on the date that is five (5) years following the Closing Date (the "Accelerable Escrow Release Date") and that are not Indemnity Escrow Continuing Claims ("Accelerable Escrow Continuing Claims") and the Accelerable Escrow Retained Amount (as defined below). Subject to Section 10.6(e), within three (3) Business Days following the Accelerable Escrow Release Date, Parent and Securityholders' Agent shall instruct the Escrow Agent to release from the Accelerable Escrow an amount in the aggregate equal to (A) the Accelerable Escrow Deposit *minus* (B) any amounts released to the Parent Indemnitees from the Accelerable Escrow prior to such date, *minus* (C) any amounts paid to Effective Time Holders who delivered Joinder Agreements, Warrant Surrender Agreements and/or Option Termination Agreements prior to such date, *minus* (D) the Accelerable Escrow Retained Amount as of such date, for distribution to each Effective Time Holder who did not deliver a Joinder Agreement, Warrant Surrender Agreements or Option Termination Agreement, as the case may be, to Parent prior to the Accelerable Escrow Release Date in accordance with such Effective Time Holder's Pro Rata Share of the Accelerable Escrow Deposit, it being acknowledged and agreed that such amount shall be released to the Paying Agent for distribution to such Effective Time Holders. The "Accelerable Escrow Retained Amount" means an amount equal to the product of (i) the Accelerable Escrow Continuing Claims multiplied by (ii)

a fraction, of which (A) the numerator is the amount of money in the Accelerable Escrow Account due to those Effective Time Holders who did not deliver Joinder Agreements, Warrant Surrender Agreements or Option Termination Agreements to Parent prior to the Accelerable Escrow Release Date; and (B) the denominator is the Purchase Price.

**(e)** Upon the full and final resolution of all Accelerable Escrow Continuing Claims, any Accelerable Escrow Retained Amounts in the Accelerable Escrow shall be distributed pursuant to the procedures set forth in Section 10.6(d) to the Effective Time Holders who did not deliver Joinder Agreements, Warrant Surrender Agreements or Option Termination Agreements, as the case may be, to Parent prior to the Accelerable Escrow Release Date.

10.7 **Defense of Third Party Claims.** The party making a claim for indemnification under this Section 10.7 is referred to as the "Indemnified Party," and the party against whom such claim for indemnification is asserted under this Section 10.7 is referred to as the "Indemnifying Party."

**(a)** Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any claim or Legal Proceeding (whether against the Company, Parent or any other Person) made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of any of the foregoing (a "Third Party Claim") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof. The failure to promptly give such written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is actually prejudiced thereby. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Damages that have been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in or, upon providing written notice to the Indemnified Party within thirty (30) days of receipt of such notice of such Third Party Claim in which the Indemnifying Party acknowledges without qualification its indemnification obligation hereunder (subject only to the applicable limitations set forth in this Section 10.7), to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, which counsel must be reasonably acceptable to the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 10.7(b), the Indemnified Party shall cooperate reasonably in the defense thereof. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it, subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided*, that if in the reasonable opinion of counsel to the Indemnified Party, there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party, such fees and disbursements shall be at the expense of the Indemnifying Party. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to give timely and sufficient notification to the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently defend such Third Party Claim, the Indemnified Party shall, subject to Section 10.7(b), without prejudice to its right to indemnification hereunder, defend such Third Party Claim and may seek indemnification for any and all Damages based upon, arising from or relating to such Third Party Claim in accordance with this Section 10. Notwithstanding anything to the contrary contained in this Section 10.7, the Indemnifying Party shall not be entitled to assume control of a Third Party Claim, and the Indemnified Party shall control such Third Party Claim, if (i) the Third Party Claim relates to or arises in connection with any criminal proceeding, action, indictment, investigation or allegation, (ii) the Third Party Claim seeks injunctive or other equitable relief or relief other than for monetary Damages against the Indemnified Party (except, in each

case, where such injunctive or other equitable relief is merely incidental to a primary claim or claims for monetary Damages), (iii) an actual or readily apparent conflict of interest (in the opinion of counsel to the Indemnified Party) exists between the Indemnifying Party and the Indemnified Party with respect to the Third Party Claim that precludes effective joint representation or (iv) a claim is made by a Parent Indemnitee and the amounts reasonably expected to be incurred in connection with such Third Party Claim, together with all other outstanding claims on the Indemnity Escrow, exceed the amount remaining in the Indemnity Escrow. If, pursuant to this Section 10.7(a), the Indemnified Party so contests, defends, litigates or settles a Third Party Claim for which it is entitled to indemnification hereunder, the Indemnified Party shall be reimbursed by the Indemnifying Party for the reasonable attorneys' fees and other expenses of defending the Third Party Claim which are incurred from time to time, promptly following the presentation to the Indemnifying Party of itemized bills for such attorneys' fees and other expenses, subject, however, to any applicable limitations set forth in this Section 10.7. Subject to any applicable limitations set forth in this Section 10.7, all expenses (including attorneys' fees) incurred by the Indemnifying Party in connection with the foregoing shall be paid by the Indemnifying Party.

**(b)** Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party; *provided* that such consent shall not be unreasonably withheld, conditioned or delayed so long as: (i) a firm offer is made to settle a Third Party Claim that (A) does not impose injunctive or other equitable relief against the Indemnified Party or any of its Affiliates (including any equitable remedies or other obligations or restrictions upon the Indemnified Party or any of its Affiliates), (B) would not lead to any liability or the creation of a financial or other obligation on the part of the Indemnified Party or any of its Affiliates, (C) provides, in customary form, for the full, unconditional written release of each Indemnified Party and its Affiliates from all Liabilities and obligations in connection with such Third Party Claim, and (D) does not adversely affect the conduct of the business of the Indemnified Party or any of its Affiliates, and (ii) the Indemnifying Party provides written notice to the Indemnified Party that it desires to accept and agree to such offer and the terms thereof. If the Indemnified Party has assumed the defense pursuant to Section 10.7(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

**(c)** Cooperation. The Indemnifying Party and the Indemnified Party shall cooperate in good faith with each other in all reasonable respects in connection with the defense of any Third Party Claim, including, upon the reasonable request of the defending party, providing copies of records within the non-defending party's possession or control relating to such Third Party Claim and making available, without expense (other than reimbursement of actual out-of-pocket expenses), Representatives of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

10.8 **Exclusive Remedy**. Except (a) in the event of fraud and (b) for equitable remedies, from and after the Effective Time, the rights to indemnification, compensation and reimbursement set forth in this Section 10 shall be the sole and exclusive monetary remedy of the Parent Indemnitees with respect to any breach of this Agreement.

10.9 **Order of Recovery**. In the event any Parent Indemnitee shall be entitled to any indemnification payment pursuant to this Section 10, such amount shall be paid first from the Indemnity Escrow and, to the extent there are insufficient funds in the Indemnity Escrow, then the remainder from pursuant to Section 10.3(e) before recovery can be made against any Effective Time Holder; provided that in the case of Effective Time Holders who have not delivered a Joinder Agreement, Warrant Surrender Agreement or Option Termination Agreement, as the case may be, prior to Parent's becoming entitled to such indemnification payment, amounts shall be paid first from the Accelerable Escrow prior to set off, deduction or retention pursuant to Section 10.3(e).

11. **Miscellaneous Provisions.**

11.1 **Securityholders' Agent.**

**(a)** Appointment. By virtue of the adoption and approval of this Agreement, the Joinder Agreements, the Warrant Surrender Agreements and the Option Termination Agreements and without any further action by any of the Effective Time Holders or the Company, the Effective Time Holders irrevocably nominate, constitute and appoint Fortis Advisors LLC, a Delaware limited liability company, as the exclusive agent and true and lawful attorney in fact of the Effective Time Holders (the "Securityholders' Agent"), with full power of substitution, to act in the name, place and stead of the Effective Time Holders for purposes of executing any documents and taking or refraining from any actions that the Securityholders' Agent may, in the Securityholders' Agent's sole discretion, determine to be necessary, desirable or appropriate in connection with this Agreement, the Escrow Agreement, the Paying Agent Agreement, the Securityholders' Agent engagement agreement, and any other agreement, document or instrument referred to in or contemplated by this Agreement, the Escrow Agreement, the Paying Agent Agreement, and any transaction contemplated under this Agreement or any such other agreement, document or instrument, including with respect to, any claim for indemnification under Sections 6 and 10. Notwithstanding the foregoing, the Securityholders' Agent shall have no obligation to act on behalf of the Effective Time Holders, except as expressly provided herein and in the Escrow Agreement, the Paying Agent Agreement, the Securityholders' Agent engagement agreement. The Securityholders' Agent hereby accepts its appointment as Securityholders' Agent.

**(b)** Authority. The Effective Time Holders grant to the Securityholders' Agent full authority to execute, deliver, acknowledge, certify and file on behalf of such Effective Time Holders (in the name of any or all of the Effective Time Holders or otherwise) any and all documents that the Securityholders' Agent may, in its sole discretion, determine to be necessary, desirable or appropriate, in such forms and containing such provisions as the Securityholders' Agent may, in its sole discretion, determine to be appropriate, in performing its duties as contemplated by Section 11.1(a). Notwithstanding anything to the contrary contained in this Agreement or in any other agreement executed in connection with the transactions contemplated hereby: (i) each Parent Indemnitee shall be entitled to deal exclusively with the Securityholders' Agent on all matters relating to any claim for indemnification under Section 10; and (ii) each Parent Indemnitee shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Effective Time Holder by the Securityholders' Agent, and on any other action taken or purported to be taken on behalf of any Effective Time Holder by the Securityholders' Agent, as fully binding upon such Effective Time Holder and such Effective Time Holder's successors as if expressly confirmed and ratified in writing by such Effective Time Holder. All actions, decisions and instructions of the Securityholders' Agent taken, made or given pursuant to the authority granted to the Securityholders' Agent pursuant to this Section 11.1 shall be conclusive and binding upon each Effective Time Holder, and no such holder shall have the right to object to, dissent from, protest or otherwise contest the same. The terms and conditions of this Agreement are hereby made, and are hereby acknowledged to be, dependent upon the determinations and actions that are contemplated or permitted to be made by the Securityholders' Agent pursuant to this Section 11.1, and the rights of all Effective Time Holders shall be qualified by and dependent upon such determinations and actions, irrespective of whether the Securityholders' Agent is acting as an agent or power of attorney of such Effective Time Holder.

**(c)** Power of Attorney. The Effective Time Holders recognize and intend that the power of attorney granted in Section 11.1(a), immunity and indemnity granted to the Securityholders' Agent Group: (i) is coupled with an interest and is irrevocable; (ii) may be delegated by the Securityholders' Agent; (iii) shall survive the death, incapacity, dissolution, liquidation or winding up of each of the Effective Time Holders and shall be binding on any successor thereto; and (iv) shall survive the delivery of an assignment by any Effective Time Holder of the whole or any fraction of his, her or its interest in any Further Distributions.

**(d)** Replacement. The Securityholders' Agent (i) may resign at any time upon thirty (30) days prior written notice to the Advisory Group or (ii) may be removed and replaced by consent of those Effective Time Holders who contributed at least fifty percent (50%) of the Indemnity Escrow. If the Securityholders' Agent shall be removed by the Effective Time Holders, or shall die, resign, become disabled or otherwise be unable to fulfill its responsibilities hereunder, the Effective Time Holders shall (by consent of those Persons who contributed at least fifty percent (50%) of the Indemnity Escrow), within ten (10) days after such removal, death, disability or inability, appoint a successor to the Securityholders' Agent and immediately thereafter notify Parent of the identity of such successor. Any such successor shall succeed the Securityholders' Agent as Securityholders' Agent hereunder. If for any reason there is no Securityholders' Agent at any time, all references herein to the Securityholders' Agent shall be deemed to refer to the Effective Time Holders.

**(e)** Expense Fund. The Expense Fund shall be used (i) for the purposes of paying directly, or reimbursing the Securityholders' Agent for, any expenses incurred by the Securityholders' Agent pursuant to this Agreement and any other agreement, document or instrument referred to in or contemplated by this Agreement and any transaction contemplated under this Agreement or any such other agreement, document or instrument, or (ii) as otherwise determined by the Advisory Group. The Securityholders' Agent will hold these funds separate from its other funds, will not use these funds for its operating expenses or any other purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. The Securityholders' Agent is not providing any investment supervision, recommendations or advice and shall have no responsibility or liability for any loss of principal of the Expense Fund other than as a result of its gross negligence or willful misconduct. The Securityholders' Agent is not acting as a withholding agent or in any similar capacity in connection with the Expense Fund, and has no tax reporting or income distribution obligations. The Effective Time Holders will not receive any interest on the Expense Fund and assign to the Securityholders' Agent any such interest. Subject to prior written consent by the Advisory Group, the Securityholders' Agent may, as reasonably necessary, contribute funds to the Expense Fund from any Further Distributions otherwise distributable to the Effective Time Holders. As soon as practicable following the completion of the Securityholders' Agent's responsibilities, the Securityholders' Agent shall disburse the balance of the Expense Fund to the Effective Time Holders in proportion to their respective Pro Rata Share in such manner as the Securityholders' Agent determines reasonably appropriate, including, if the Securityholders' Agent elects, through a paying agent for further distribution.

**(f)** Access. From and after the Effective Time, Parent shall cause the Surviving Corporation to provide the Securityholders' Agent with reasonable access to information about the Surviving Corporation and the reasonable assistance of the officers and employees of Parent and the Surviving Corporation for purposes of performing its duties and exercising its rights under this Agreement, provided, that the Securityholders' Agent shall treat confidentially any nonpublic information about the Surviving Corporation (except in connection with the performance by the Securityholders' Agent of its duties or the exercise of its rights under this Agreement).

**(g)** Limitation of Liability. Certain Effective Time Holders have entered into an engagement agreement with the Securityholders' Agent to provide direction to the Securityholders' Agent in connection with its services under this Agreement, the Escrow Agreement, the Paying Agent Agreement and the Securityholders' Agent engagement agreement (such Effective Time Holders, including their individual representatives and any advisory group formed on behalf of the Company or the Effective Time Holders, collectively hereinafter referred to as the "Advisory Group"). Neither the Securityholders' Agent nor its members, managers, directors, officers, contractors, agents and employees nor any member of the Advisory Group (collectively, the "Securityholders' Agent Group"), shall be liable to any Effective Time Holder for any action or failure to act in connection with the acceptance or administration of the Securityholders' Agent's responsibilities hereunder, under the Escrow Agreement, the Paying Agent Agreement or under any Securityholders' Agent engagement agreement, unless and only to the extent such action or failure to act constitutes gross negligence or willful misconduct. The Securityholders' Agent shall be entitled to: (i) rely upon the Merger Consideration Certificate, (ii) rely upon any signature reasonably believed by it to be genuine, and (iii) reasonably assume that a signatory has proper authorization to sign on behalf of the applicable Effective Time Holder or other party.

**(h)** Indemnification. The Effective Time Holders shall indemnify, defend and hold harmless the Securityholders' Agent Group from and against any and all losses, claims, damages, liabilities, fees, costs, expenses (including fees, disbursements and costs of counsel and other skilled professionals and in connection with seeking recovery from insurers), judgments, fines or amounts paid in settlement (collectively, the "Securityholders' Agent Expenses") incurred without gross negligence or willful misconduct on the part of the Securityholders' Agent Group and arising out of or in connection with the acceptance or administration of its duties hereunder, under the Escrow Agreement, the Paying Agent Agreement or under any Securityholders' Agent engagement agreement. Such Securityholders' Agent Expenses may be recovered first, from the Expense Fund, second, from any distribution of any Further Distributions otherwise distributable to the Effective Time Holders at the time of distribution, and third, directly from the Effective Time Holders. The Effective Time Holders acknowledge that the Securityholders' Agent shall not be required to expend or risk its own funds or otherwise incur any financial liability in the exercise or performance of any of its powers, rights, duties or privileges or pursuant to this Agreement, the Escrow Agreement, the Paying Agent Agreement, or the transactions contemplated hereby. Furthermore, the Securityholders' Agent shall not be required to take any action unless the Securityholders' Agent has been provided with funds, security or indemnities which, in its reasonable determination, are sufficient to protect the Securityholders' Agent against the costs, expenses and liabilities which may be incurred by the Securityholders' Agent in performing such actions.

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

11.3 **No Waiver Relating to Claims for Fraud.** The Liability of any Person under Section 10 will be in addition to, and not exclusive of, any other Liability that such Person may have at law or in equity based on such Person's fraudulent acts or omissions. Notwithstanding anything to the contrary contained in this Agreement, none of the provisions set forth in this Agreement, including the provisions set forth in Section 10, shall be deemed a waiver by any party to this Agreement of any right or remedy which such party may have at law or in equity based on any other Person's fraudulent acts or omissions, nor will any such provisions limit, or be deemed to limit: (a) the amounts of recovery sought or awarded in any claim for fraud against such other Person; (b) the time period during which a claim for fraud may be brought against such other Person; or (c) the recourse which any such party may seek against such other Person with respect to a claim for fraud.

11.4 **Fees and Expenses.** Each party to this Agreement shall bear and pay all fees, costs and expenses that have been incurred or that are incurred in the future by such party in connection with the transactions contemplated by this Agreement, including all fees, costs and expenses incurred by such party in connection with or by virtue of: (a) the negotiation, preparation and review of this Agreement (including the Disclosure Schedules) and all agreements, certificates, opinions and other instruments and documents delivered or to be delivered in connection with the transactions contemplated by this Agreement; (b) the preparation and submission of any filing or notice required to be made or given in connection with any of the transactions contemplated by this Agreement, and the obtaining of any Consent required to be obtained in connection with any of such transactions; and (c) the consummation of the Merger.

11.5 **Notices.** Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received: (a) if delivered by hand, when delivered; (b) if sent by facsimile transmission, with a copy mailed on the same day in the manner provided in clauses (c) or (d) of this Section 11.5, when transmitted and receipt is confirmed by telephone; (c) if sent by registered, certified or first class mail, the third (3rd) Business Day after being sent; and (d) if sent by overnight delivery via a national courier service, one (1) Business Day after being sent, in each case to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

**If to Parent, Merger Sub or, after the Closing, the Company:**

Myriad Genetics, Inc.
320 Wakara Way
Salt Lake City, Utah
Attention: General Counsel
Facsimile: (801) 584-3640

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

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Attention: Jonathan L. Kravetz
Facsimile: 617-542-2241
Email: jlkravetz@mintz.com

**If to the Company, prior to the Closing:**

Assurex Health, Inc.
6030 S. Mason-Montgomery Road
Mason, OH 45040
Attention: Inger Eckert, Senior Vice President and General Counsel
Facsimile: (513) 448-0636
Email: ieckert@assurerxhealth.com

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

Latham & Watkins LLP
John Hancock Tower, 27th Floor
200 Clarendon Street
Boston, MA 02116
Attention: Peter N. Handrinos
Facsimile: (617) 948-6001
Email: peter.handrinos@lw.com

**If to the Securityholders' Agent:**

Fortis Advisors LLC
Attention: Notice Department
Facsimile: (858) 408-1843
Email: notices@fortisrep.com

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

11.7 **Counterparts and Exchanges by Electronic Transmission or Facsimile.** This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .PDF format or by facsimile shall be sufficient to bind the parties to the terms and conditions of this Agreement.

11.8 **Governing Law; Dispute Resolution.**

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

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

11.9 **Successors and Assigns.** This Agreement shall be binding upon: (a) the Company and its successors and assigns (if any); (b) Parent and its successors and assigns (if any); (c)

Merger Sub and its successors and assigns (if any); (d) the Securityholders' Agent and its successors and assigns (if any); and (e) the Effective Time Holders. This Agreement shall inure to the benefit of: (i) the Company; (ii) Parent; (iii) Merger Sub; (iv) the other Indemnitees; and (v) the respective successors and assigns (if any) of the foregoing. Parent may freely assign any or all of its rights under this Agreement (including its indemnification rights under Section 10), in whole or in part, to any Affiliate without obtaining the Consent of any other party hereto or of any other Person.

11.10 **Remedies Cumulative; Specific Performance.** Except as expressly set forth in this Agreement, the rights and remedies of the parties hereto shall be cumulative (and not alternative). The parties to this Agreement agree that, in the event of any breach or threatened breach by any party hereto of any covenant, obligation or other provision set forth in this Agreement: (a) each other party hereto shall be entitled, without any proof of actual damages (and in addition to any other remedy that may be available to it) to: (i) an Order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach; and (b) no party shall not be required to provide any bond or other security in connection with any such Order or in connection with any related action or Legal Proceeding.

11.11 **Waiver.** No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

11.12 **Waiver of Jury Trial.** Each of the parties hereto hereby irrevocably waives any and all right to trial by jury in any action, suit or other legal proceeding arising out of or related to this Agreement or the transactions contemplated hereby.

11.13 **Amendments.** This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered: (a) prior to the Closing Date, by the Company, Parent, Merger Sub and the Securityholders' Agent; and (b) after the Closing Date, by Parent and the Securityholders' Agent (acting exclusively for and on behalf of all of the Effective Time Holders).

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

11.15 **Parties in Interest.** Except for the provisions of Section 4.8, Section 10 and as set forth in the following two sentences, none of the provisions of this Agreement is intended to provide any rights or remedies to any employee, creditor or other Person other than Parent, Merger Sub, the Company, the Securityholders' Agent and their respective successors and assigns (if any). The Company shall have the right, on behalf of the Effective Time Holders, to pursue damages (including claims for

damages based on loss of the economic benefits of the transaction to the Effective Time Holders) in the event of Parent's or Merger Sub's breach of this Agreement prior to the Closing Date (whether or not the Agreement has been terminated pursuant to Section 9), which right is hereby expressly acknowledged and agreed by Parent and Merger Sub. The third-party beneficiary rights referenced in the preceding sentence may be exercised only by the Company (on behalf of the Effective Time Holders as their agent) through actions expressly approved by the Company's Board of Directors, and no Effective Time Holder whether purporting to act in its capacity as a securityholder or purporting to assert any right (derivatively or otherwise) on behalf of the Company, shall have any right or ability to exercise or cause the exercise of any such right.

11.16 **Confidential Nature of Information.** Each party agrees that it will treat in confidence all documents, materials and other information which it shall have obtained regarding the other parties hereto during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents, and, in the event the transactions contemplated hereby shall not be consummated, each party will return to the other party or destroy all copies of nonpublic documents and materials which have been furnished in connection therewith. Such documents, materials and information shall not be communicated to any third party (other than, in the case of Parent or Merger Sub, to their counsel, accountants or Affiliates, and in the case of the Acquired Companies and the Securityholders' Agent, to their Representatives). No other party shall use any confidential information in any manner whatsoever except solely for the purpose of evaluating the proposed Merger; *provided, however*, that after the Effective Time, Parent and the Company may use or disclose any confidential information related to any Acquired Company or its assets or business. The obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information which (a) is or becomes available to such party on a non-confidential basis from a source other than such party or its agents, provided that such source is not known by such party to be bound by any contractual or other obligation of confidentiality to any other Person with respect to such information, (b) is or becomes generally available to the public other than as a result of disclosure by such party or its agents, (c) is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed or (d) the Company and Parent mutually deem necessary to disclose to obtain any of the Consents contemplated hereby.

11.17 **No Public Announcement.** Prior to the Effective Time, neither Parent, Merger Sub, Securityholders' Agent nor any Acquired Company (nor any of their respective Affiliates) shall, without the approval of each other party, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that the any party shall be so obligated by law, any listing agreement with any securities exchange or share market, in which case such party shall first advise each other party thereof and the parties shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued; *provided, however*, that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement. Following the Effective Time, neither the Securityholders' Agent nor any of its Affiliates shall make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that such party shall be so obligated by law, in which case such party shall advise Parent thereof and the parties shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued.

11.18 **Entire Agreement.** This Agreement and the other agreements referred to herein set forth the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof. The parties hereto acknowledge and agree that, effective as of the Effective Time, the Confidentiality Agreement dated October 12, 2015 between the Company and Parent is hereby terminated and shall be null and void and of no force or effect.

11.19 **Disclosure Schedules.** The Disclosure Schedules shall be arranged in separate sections corresponding to the numbered and lettered sections and subsections contained in this Agreement, and the information disclosed in any numbered or lettered part shall be deemed to relate to and to qualify only the particular representation or warranty of the Company set forth in the corresponding numbered or lettered section or subsection of this Agreement, except to the extent that (a) such information is explicitly cross-referenced in another section of the Disclosure Schedules, or (b) it could reasonably be concluded on the face of the disclosure or based on the subject matter of such disclosure (without reference to any document referred to therein) that such information applies to such other section or subsection of this Agreement and regardless of whether such section or subsection of this Agreement is qualified by reference to the Disclosure Schedules.

11.20 **Construction.** For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders. 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. As used in this Agreement: (i) 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"; and (ii) the use of the word "or" shall not be exclusive. Except as otherwise indicated, all references in this Agreement to "Sections," "Schedules" and "Exhibits" are intended to refer to Sections of this Agreement and Schedules and Exhibits to this Agreement.

11.21 **No Tax Advice.** Each party hereto acknowledges and agrees that it has not received and is not relying upon Tax advice from any other party hereto, and that it has and will continue to consult its own advisors with respect to Taxes. For the avoidance of doubt, nothing in this provision shall be constructed to limit any rights of any Indemnitee as set forth in Section 6 or 10.

11.22 **Time is of the Essence.** Time is of the essence with respect to the performance of this Agreement.

*[Remainder of page intentionally left blank]*

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

**MYRIAD GENETICS, INC.,**
a Delaware corporation

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

**ASSUREX HEALTH, INC.,**
a Delaware corporation

By: _____
Name: _____
Title: _____

**FORTIS ADVISORS LLC**

By: _____
Name: _____
Title: _____

*[Signature Page to Merger Agreement]*

**EXHIBIT A**

**CERTAIN DEFINITIONS**

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

"280G Approval" means evidence that any Contracts that may result, separately or in the aggregate, in a Section 280G Payment shall have been approved by stockholders of the Company holding the number of shares of Company Capital Stock required by the terms of Section 280G in order for such payments and benefits not to be deemed parachute payments under Section 280G, with such approval to be obtained in a manner that satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and all applicable regulations (whether proposed or final) relating to Section 280G, or, in the absence of such stockholder approval, each Person who would otherwise have been entitled to any such payments or benefits shall have duly executed and delivered to Parent a waiver of such Person's rights with respect to any or all of the Section 280G Payments, in form and substance reasonably satisfactory to Parent, duly executed by each Person who might receive any Section 280G Payment.

"401(k) Plan" has the meaning set forth in Section 4.5 of this Agreement.

"Accelerable Escrow" has the meaning set forth in Section 1.5(c) of this Agreement.

"Accelerable Escrow Continuing Claim" has the meaning set forth in Section 10.6(d) of this Agreement.

"Accelerable Escrow Deposit" means twenty percent (20%) of the Purchase Price.

"Accelerable Escrow Retained Amount" has the meaning set forth in Section 10.6(a) of this Agreement.

"Accounting Firm" has the meaning set forth in Section 1.10(b)(iii) of this Agreement.

"Acquired Company" means: (a) the Company; and (b) each Subsidiary of the Company.

"Acquired Company Contract" means any Contract: (a) to which any of the Acquired Companies is a party; (b) by which any of the Acquired Companies or any of its assets is bound or under which any of the Acquired Companies has any obligation; or (c) under which any of the Acquired Companies has any right or interest.

"Acquired Company Employee Plan" means any plan, program, policy, practice, Contract, whether written or unwritten, providing benefits or compensation to any Acquired Company Service Provider or any beneficiary or dependent thereof that is sponsored or maintained by an Acquired Company or to which an Acquired Company contributes or is obligated to contribute, or otherwise has any material Liability with respect to, including any employee welfare benefit plan within the meaning of Section 3(1) of ERISA, any employee pension benefit plan within the meaning of Section 3(2) of ERISA (whether or not such plan is subject to ERISA) or any bonus, incentive, deferred compensation, vacation, insurance, supplemental unemployment, retention, stock purchase, stock option or other equity-related award, severance, employment, consulting, change of control or fringe benefit plan, program, policy, practice or Contract, but excluding any employee benefit plan, agreement, arrangement or program sponsored by a Governmental Authority.

"Acquired Company IT Systems" means all information technology and computer systems (including Computer Software, information technology and telecommunication hardware and other equipment) used in the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information whether or not in electronic format, used in or necessary to the conduct of the business of the Acquired Companies.

"Acquired Company Payment Programs" has the meaning set forth in Section 2.16 of this Agreement.

"Acquired Company Service Provider" means any current or former employee, independent contractor, consultant, advisor, officer or director of any of the Acquired Companies or any Affiliate of any of the Acquired Companies.

"Acquisition Transaction" means any transaction or series of transactions involving:

**(a)** the sale, license, sublicense or disposition of all or a material portion of any Acquired Company's business or assets, including Intellectual Property;

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

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

"acting improperly" has the meaning set forth in Section 2.29(a) of this Agreement.

"Adjustment Escrow" has the meaning set forth in Section 1.5(c) of this Agreement.

"Adjustment Escrow Amount" means $500,000.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. For purposes of this definition and the Agreement, the term "control" (and correlative terms) means the power, whether by contract, equity ownership or otherwise, to direct the policies or management of a Person, directly or indirectly.

"Aggregate Option Exercise Price" means the aggregate amount payable to the Company in respect of all In-the-Money Options unexercised immediately prior to the Effective Time if the holders thereof exercised such In-the-Money Options in full for cash as of the Effective Time.

"Agreement" means the Agreement and Plan of Merger to which this Exhibit A is attached (including the Disclosure Schedule), as it may be amended from time to time.

"Breach Notification Rule" has the meaning set forth in Section 2.15(f) of this Agreement.

"Business Associate Agreement" has the meaning set forth in Section 2.15(e) of this Agreement.

"Business Day" means any day other than: (a) a Saturday, Sunday or federal or bank holiday; or (b) a day on which commercial banks in New York, New York are authorized or required to be closed.

"Cash and Cash Equivalents" means the aggregate amount of the Acquired Companies' cash and cash equivalents on hand or in bank accounts, as of the close of business on the day immediately preceding the Closing Date, as determined in accordance with GAAP, using the policies, conventions, methodologies and procedures used by the Company in preparing the Company Financial Statements.

"Certificate of Merger" has the meaning set forth in Section 1.3(a) of this Agreement.

"Change in Control Agreement" means any agreement between a Continuing Employee and the Company that provides for benefits upon a change in control of the Company.

"Charter Documents" has the meaning set forth in Section 2.2 of this Agreement.

"Claim Notice" has the meaning set forth in Section 10.5(a) of this Agreement.

"Closing" has the meaning set forth in Section 1.3(a) of this Agreement.

"Closing Date" has the meaning set forth in Section 1.3(a) of the Agreement.

"Closing Date Transaction Bonuses" means those bonuses paid to employees of the Acquired Companies pursuant to the Equity Transition Plan that are considered Closing Payments under the Equity Transition Plan, except that portion of the Closing Payments that is subject to a delay in payment due to an escrow or purchase price adjustment.

"Closing Net Indebtedness Amount" means the aggregate amount of Net Indebtedness, including the Indebtedness in the categories identified on Annex Schedule 11(c)(2), as of the close of business on the day immediately preceding the Closing Date. For illustrative purposes only, attached as Annex Schedule 11(c)(2) is a sample calculation of the Closing Net Indebtedness Amount as of June 30, 2016 (as opposed to the Closing Date).

"Closing Net Indebtedness Shortfall" has the meaning set forth in Section 1.10(c)(iii) of this Agreement.

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

"Company" has the meaning set forth in the introductory paragraph of this Agreement.

"Company Capital Stock" means the Company Common Stock and the Company Preferred Stock.

"Company Closing Certificate" has the meaning set forth in Section 7.6 of this Agreement.

"Company Common Stock" means the shares of common stock, $0.00001 par value per share, of the Company.

"Company Cure Period" has the meaning set forth in Section 9.1(d) of this Agreement.

"Company Financial Statements" has the meaning set forth in Section 2.5(a) of this Agreement.

"Company Group" means any "affiliated group" (as defined in Section 1504(a) of the Code without regard to the limitations contained in Section 1504(b) of the Code) that, at any time on or before the Closing Date, includes or has included any Acquired Company or any direct or indirect predecessor of any Acquired Company, or any other group of corporations filing Tax Returns on a combined, consolidated, unitary, or similar basis that, at any time on or before the Closing Date, includes or has included any Acquired Company or any direct or indirect predecessor of any Acquired Company.

"Company Intellectual Property" means any Intellectual Property owned by, under obligation of assignment to, or licensed to any of the Acquired Companies, but excluding any license for "shrink wrap" or similarly licensed software generally commercially available to the public and any generally available, non-customized, third party software licensed to the Company that does not require aggregate payments in any given year in excess of $100,000 in license, maintenance, royalty and/or other fees.

"Company Net Revenue" means net revenue recognized by the Company or the Surviving Corporation in accordance with GAAP, using the revenue recognition principles used by the Company in preparing the audited December 31, 2015 Company Financial Statements and the unaudited June 30, 2016 Company Financial Statements.

"Company Option" means an outstanding option granted pursuant to, or outside of, any Company Option Plan and any other option or other right (including any commitment to grant options or other rights) to purchase or otherwise acquire Company Capital Stock, whether or not vested or exercisable.

"Company Option Plan" means collectively, the Company's 2010 Equity Incentive Plan and 2015 Equity Incentive Plan.

"Company Patents" means Patents included in the Company Intellectual Property.

"Company Product" means any diagnostic test or clinical laboratory service being researched, developed or offered by any of the Acquired Companies, alone or in collaboration with another Person.

"Company Preferred Stock" means the shares of preferred stock, $0.00001 par value per share, of the Company.

"Company Registered Intellectual Property" means all of the Registered Intellectual Property that is owned by, exclusively or non-exclusively licensed by, under obligation of assignment to, or filed in the name of any of the Acquired Companies, but excluding any license for "shrink wrap" or similarly licensed software generally commercially available to the public and any generally available, non-customized, third party software licensed to the Company that does not require aggregate payments in any given year in excess of $100,000 in license, maintenance, royalty and/or other fees.

"Company Software" has the meaning set forth in Section 2.11(l).

"Company Stock Certificates" has the meaning set forth in Section 1.9(d) of this Agreement.

"Company Transaction Expenses" means, without duplication, all fees, costs, expenses, payments or expenditures (collectively, "Expenses") (a) described in Section 11.4 of this Agreement; (b) payable to legal counsel or to any financial advisor, broker, accountant or other Person who performed services for or on behalf of, or provided advice to any Acquired Company, or who is otherwise entitled to any compensation or payment from any Acquired Company, in connection with or relating to the Agreement, any of the transactions contemplated by the Agreement, or the process resulting in such transactions, including previously incurred IPO related expenses; (c) that arise or are expected to arise, or are triggered

or become due or payable, as a direct or indirect result of the consummation of the transactions contemplated by the Agreement, including any fees and expenses related to the D&O Tail Policy, the amount of the Closing Date Transaction Bonuses, the amount of unpaid fiscal year 2016 executive bonuses, and any other transaction, discretionary or retention bonuses (excluding payments made with respect to In-the-Money Options pursuant to Section 1.7 or agreements entered into at the request of Parent), made or provided, or required to be made or provided, by any Acquired Company as a result of or in connection with the Merger or any of the other transactions contemplated by the Agreement in each case, pursuant to agreements in effect with any Acquired Company or any of its Subsidiaries (or discretionary decisions made by any Acquired Company or any of its Subsidiaries) prior to Closing, including the employer portion of any applicable payroll taxes; (d) severance or change of control payments or benefits (or similar payment obligations) to be made concurrently with or following the Closing with respect to the employees listed on Annex Schedule 11(c)(3)(i) by any Acquired Company pursuant to agreements in effect with any Acquired Company or any of its Subsidiaries (or discretionary decisions made by any Acquired Company or any of its Subsidiaries) prior to the Closing, including the employer portion of any applicable payroll taxes; provided that, without limiting Section 10.2(a)(x), Company Transaction Expenses shall not include severance or change of control payments or benefits (or similar payment obligations) payable to the continuing employees listed on Annex Schedule 11(c)(3)(ii); (e) incurred by or on behalf of any stockholder or any Acquired Company Service Provider in connection with the transactions contemplated by the Agreement that any Acquired Company is or will be obligated to pay or reimburse after the Closing; (f) any forgiveness by any Acquired Company of any Indebtedness; and (g) incurred to obtain consents, waivers or approvals under any Acquired Company Contract as a result of or in connection with the transactions contemplated by this Agreement; *provided*, *however*, that Company Transaction Expenses shall not include any amount included in the Closing Net Indebtedness Amount or the Net Working Capital Amount or any amounts related to the Post-Closing Date Transaction Bonuses or commitments made by or on behalf of Parent prior to Closing with respect to Acquired Company employees.

"Company Warrant" has the meaning set forth in Section 1.6(a) of this Agreement.

"Computer Software" means computer software (including web sites, HTML code, and firmware and other software embedded in hardware devices), data files, source and object codes, APIs, tools, user interfaces, manuals and other specifications and documentation and all know-how relating thereto.

"Consent" means any approval, consent, ratification, permission, waiver, order or authorization (including any Governmental Authorization).

"Contaminant" includes any material, substance, chemical, gas, liquid, waste, effluent, pollutant or contaminant which, whether on its own or admixed with another, is identified or defined in or regulated by or pursuant to any Environmental Laws or which upon release into the Environment presents a danger to the Environment or to the health or safety or welfare of any Person.

"Contract" means any legally binding written, oral or other agreement, contract, license, sublicense, subcontract, settlement agreement, lease, understanding, arrangement, instrument, note, purchase order, warranty, insurance policy, benefit plan or undertaking of any nature.

"D&O Tail Policy" has the meaning set forth in Section 4.7 of this Agreement.

"Damages" includes any loss, damage, injury, liability, claim, demand, settlement, judgment, award, fine, penalty, Tax, fee (including reasonable attorneys' fees), charge, cost (including costs of investigation) or expense of any nature, provided, that "Damages" shall not include punitive damages (unless such punitive damages are payable in connection with a Third Party Claim).

"Deductible Amount" has the meaning set forth in Section 10.3(b) of this Agreement.

"DGCL" has the meaning set forth in the recitals to this Agreement.

"Disclosure Schedules" means the schedules (dated as of the date of this Agreement) delivered to Parent on behalf of the Company and prepared in accordance with Section 11.19 of this Agreement.

"Dispute Notice" has the meaning set forth in Section 1.10(b)(i) of this Agreement.

"Dissenting Shares" has the meaning set forth in Section 1.8(a) of this Agreement.

"DR Plans" means the disaster recovery and business continuity plans of each Acquired Company and each of its Affiliates.

"Effective Time" has the meaning set forth in Section 1.3(a) of this Agreement.

"Effective Time Holder Information" means, (a) with respect to each Person who is a holder of Outstanding Capital Stock: (i) the name, email address (to the extent available) and address of record of each such holder; (ii) the number of shares of Outstanding Capital Stock of each class and series held by each such holder, including whether any of such shares are Restricted Company Shares and, if so, the vesting schedule of such Restricted Company Share; (iii) the consideration that each such holder is entitled to receive pursuant to Section 1.5; (iv) the cash amount to be contributed to the Escrow Amount and the Expense Fund with respect to the shares of Outstanding Capital Stock held by each such holder pursuant to Section 1.5(c); (v) the net cash amount to be paid to each such holder by the Paying Agent upon surrender of such holder's Company Stock Certificates in accordance with Section 1.9 (after deduction of any amounts to be contributed to the Escrow Amount and the Expense Fund by such holder); and (vi) whether any Taxes are to be withheld in accordance with Section 1.9(h) from the consideration that each such holder is entitled to receive pursuant to Section 1.5; and (b) with respect to each Outstanding Warrant: (i) the name and address of record of the holder thereof; (ii) the exercise price per share and the number of shares of Company Common Stock subject to such Outstanding Warrant; (iii) the consideration that the holder of such Outstanding Warrant is entitled to receive pursuant to Section 1.6; (iv) the cash amount to be contributed to the Escrow Amount and the Expense Fund with respect to each Outstanding Warrant held by each such holder pursuant to Section 1.6; (v) whether any Taxes are to be withheld in accordance with Section 1.9(h) from the consideration that the holder of such Outstanding Warrant is entitled to receive pursuant to Section 1.6; and (vi) the net cash amount to be paid to the holder of such Outstanding Warrant (after deduction of amounts to be contributed to the Escrow Amount and the Expense Fund by such holder) pursuant to Section 1.6.

"Effective Time Holders" means the Non-Dissenting Stockholders, the holders of In-the-Money Options and the holders of Outstanding Warrants (after giving effect to any exercises or deemed exercises of Company Warrants prior to the Effective Time).

"Election Notice" has the meaning set forth in Section 4.5 of this Agreement.

"Encumbrance" means any lien, pledge, hypothecation, charge, mortgage, condition, equitable interest, security interest, encumbrance, intangible property right, claim, infringement, option, right of first refusal, preemptive right, community property interest or restriction of any nature (including any restriction on the voting of any security or restriction on the transfer, use or ownership of any security or other asset).

"End Date" has the meaning set forth in Section 9.1(b) of this Agreement.

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

"Environment" includes: (a) any and all buildings, structures, fixtures, fittings, appurtenances, pipes, conduits, valves, tanks, vessels and containers whether above or below ground level; and (b) ambient air (including indoor air), land surface, sub-surface strata, soil, surface water (including navigable waters, ocean waters, streams, ponds, drainage basins), ground water, drinking water supply, river or stream sediment, marshes, wet lands, flora and fauna and any other environmental medium or natural resource.

"Environmental Law" means: (a) the common law; and (b) all Legal Requirements, by-laws, Orders, instruments, directives, decisions, injunctions and judgments of any Governmental Authority and all approved codes of practice (whether voluntary or compulsory) relating to the protection of the Environment or of human health or safety or welfare or to the manufacture, formulation, processing, treatment, storage, containment, labeling, handling, transportation, distribution, recycling, reuse, release, disposal, removal, remediation, abatement or clean-up of any Contaminant and any amendment thereto and any and all regulations, orders and notices made or served thereunder or pursuant thereto), including, (i) the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*, as amended; (ii) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended; (iii) the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended; (iv) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, as amended; (v) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, as amended; (vi) the Emergency Planning and Community Right To Know Act, 42 U.S.C. § 11001 *et seq.*, as amended; (vii) the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, as amended; and (viii) any analogous applicable Legal Requirements implemented in any country in which any Acquired Company conducts business.

"Environmental License" means any Consent or Governmental Authorization required by or pursuant to any applicable Environmental Laws.

"Environmental Release" means the spilling, leaking, pumping, pouring, emitting, releasing, emptying, discharging, injecting, escaping, leaching, dumping, leaving, discarding or disposing of any Contaminant into or upon the Environment.

"Equity Transition Plan" means the Company's Equity Transition Plan set forth on Schedule 2.21(d).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any Subsidiary or other Entity that would be considered a single employer with any Acquired Company within the meaning of Section 414 of the Code.

"Escrow" has the meaning set forth in Section 1.5(c) of this Agreement.

"Escrow Agent" means JPMorgan Chase Bank, N.A., a national banking association with offices located in the State of New York.

"Escrow Agreement" has the meaning set forth in Section 1.5(c) of this Agreement.

"Escrow Amounts" means the amounts deposited into the Indemnity Escrow, the Accelerable Escrow and the Adjustment Escrow pursuant to this Agreement.

"Estimated Closing Net Indebtedness Amount" has the meaning set forth in Section 1.3(b)(vi) of this Agreement.

"Estimated Net Working Capital Amount" has the meaning set forth in Section 1.3(b)(vi) of this Agreement.

"Existing Representation" has the meaning set forth in Section 5.5(a) of this Agreement.

"Expense Fund" means $500,000.

"Expert Calculations" has the meaning set forth in Section 1.10(b)(iii) of this Agreement.

"Expiration Date" has the meaning set forth in Section 10.1(a) of this Agreement.

"Export Controls" has the meaning set forth in Section 2.29(b)(iv) of this Agreement.

"FCPA" has the meaning set forth in Section 2.29(a) of this Agreement.

"FDA" means the United States Food and Drug Administration, or any predecessor or successor agency thereto.

"Federal Healthcare Program" means Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act) or any other state or federal health care program as defined at 42 U.S.C. §1320a-7b(f).

"FIRPTA Certificate" means (a) a statement dated not earlier than twenty (20) days prior to the Closing Date in accordance with Treasury Regulation §§ 1.1445-2(c)(3) and 1.897-2(h) certifying that the Company is not, and has not been during the applicable period specified in Code Section 897(c)(1)(A)(ii), a "United States real property holding corporation" for purposes of Sections 897 and 1445 of the Code, and (b) the notification to the U.S. Internal Revenue Service described in Treasury Regulation § 1.897-2(h)(2) regarding delivery of the statement referred to in the preceding clause (a), in each case signed by a responsible corporate officer of the Company.

"Fully Diluted Shares of Company Capital Stock" means the sum, without duplication, of the aggregate number of shares of Company Capital Stock (on an as converted to Company Common Stock basis) that are issued and outstanding immediately prior to the Effective Time (other than shares to be cancelled in accordance with Section 1.1) or issuable upon the exercise of each In-the-Money Option and Company Warrant.

"Fundamental Representations" has the meaning set forth in Section 10.1(a) of this Agreement.

"Further Distributions" means the sum of (A) amounts released to Effective Time Holders from the Adjustment Escrow *plus* (B) the Working Capital Surplus *plus* (C) the Net Indebtedness Underpayment *plus* (D) amounts released to Effective Time Holders from the Indemnity Escrow *plus* (E) the Earnout Payments, in each case without interest, if, when and to the extent payable in accordance with this Agreement.

"Further Distributions Per Share Amount" means (i) until an aggregate amount equal to the Series D-2 Hurdle Delta has been distributed or paid with respect to the Per Share Amount and Further Distributions Per Share Amount in respect of each share of Company Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, each in accordance with Section 1.5(a), the amount of Further Distributions, when and if distributed, divided by the number of Fully Diluted Shares of Company Capital Stock other than any Series D-1 Shares or any Series D-2 Shares, (ii) after an aggregate amount equal to the Series D-2 Hurdle Delta has been distributed or paid with respect to the Per Share Amount and Further Distributions Per Share Amount in respect of each share of Company Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, each in accordance with Section 1.5(a), but until an aggregate amount equal to the Series D-1 Hurdle Delta has been distributed or paid with respect to the Per Share Amount and Further Distributions Per Share Amount in respect of each share of Company Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, each in accordance with Section 1.5(a), the amount of Further Distributions, when and if distributed, divided by the number of Fully Diluted Shares of Company Capital Stock (including all Series D-2 Shares) other than any Series D-1 Shares, and (iii) after an aggregate amount equal to the Series D-1 Hurdle Delta has been distributed or paid with respect to the Per Share Amount and Further Distributions Per Share Amount in respect of each share of Company Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, each in accordance with Section 1.5(a), the amount of Further Distributions, when and if distributed, divided by the number of Fully Diluted Shares of Company Capital Stock (including all Series D-1 Shares and Series D-2 Shares). For the avoidance of doubt, (A) in the foregoing clause (ii) each Series D-2 Share (but no Series D-1 Share) receives the Further Distributions Per Share Amount and (B) in the foregoing clause (iii) each Series D-1 Share and each Series D-2 Share receives the Further Distributions Per Share Amount.

"GAAP" means generally accepted accounting principles in the United States.

"Governmental Authorization" means any: permit, license (including any state distribution license), approval, certificate, franchise, privilege, immunity, order, permission, clearance, exemption, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Legal Requirement.

"Governmental Authority" means any: (a) multinational or supranational body exercising legislative, judicial or regulatory powers, (b) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (c) federal, state, local, municipal, foreign or other government; or (d) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or Entity and any court or other tribunal).

"Health Care Laws" means the following Legal Requirements, including their implementing regulations: (i) the Federal Anti-Kickback Statute, 42 U.S. C. § 1320a-7b(b); (ii) the Federal False Claims Act, 31 U.S.C. § 3729; (iii) the Federal Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; (iv) the Federal Ethics in Patient Referrals Act, 42 U.S.C. § 1395nn et seq.; (v) applicable privacy and security Legal Requirements regarding protected health information under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act; (vi) the Medicare statute, 42 U.S.C. § 1395 et seq.; (vii) the Medicaid statute, 42

U.S.C. § 1900 et seq.; (viii) the exclusion laws, 42 U.S.C. §1320a-7; (ix) the Clinical Laboratory Improvement Amendments ("CLIA"), 42 U.S.C. § 263a; (x) applicable provisions of the U.S. Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq.; (xi) applicable final guidance documents issued by the U.S. Food and Drug Administration and (xi) all comparable state Legal Requirements, including any applicable state laboratory licensure Legal Requirements.

"HIPAA" has the meaning set forth in Section 2.15(f) of this Agreement.

"HIPAA Requirements" has the meaning set forth in Section 2.15(f) of this Agreement.

"Holder Group" has the meaning set forth in Section 5.5(a) of this Agreement.

"Holder Indemnitees" means the following Persons: (a) each Effective Time Holder; (b) each Effective Time Holder's current and future Affiliates; (c) the respective Representatives of the Persons referred to in clauses "(a)" and "(b)" above; and (d) the respective successors and assigns of the Persons referred to in clauses "(a)," "(b)" and "(c)" above.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"In-the-Money Option" means a vested Company Option for which the Option Per Share Consideration *plus* the amount deemed contributed to the Escrow Fund by the Holder of such Company Option is greater than zero.

"Indebtedness" means, without duplication: (a) all obligations (including the principal amount thereof or, if applicable, the accreted amount thereof, the amount of accrued and unpaid interest thereon and any prepayment or repayment fees or penalties) of the Acquired Companies, whether or not represented by bonds, debentures, notes or other securities (whether or not convertible into any other security), for the repayment of money borrowed, whether owing to banks, financial institutions, on equipment leases or otherwise; (b) all deferred indebtedness or other payments of the Acquired Companies for the payment of the purchase price of property or assets purchased, including any earn-out payment or contingent consideration payment obligations (other than accounts payable incurred in the ordinary course of business that are not more than thirty (30) days past due); (c) all obligations of the Acquired Companies to pay rent or other payment amounts under a lease which is required to be classified as a capital lease on the face of a balance sheet prepared in accordance with GAAP; (d) all outstanding reimbursement obligations of the Acquired Companies with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of any Acquired Company; (e) all obligations of the Acquired Companies under any interest rate swap agreement, forward rate agreement, interest rate cap or collar agreement or other financial agreement or arrangement entered into for the purpose of limiting or managing interest rate risks; (f) all guaranties, endorsements, assumptions and other contingent obligations of the Acquired Companies in respect of, or to purchase or to otherwise acquire, Indebtedness of others; (g) all premiums, penalties, fees, expenses, breakage costs and change of control payments required to be paid or offered in respect of any of the foregoing on prepayment, as a result of the consummation of the transactions contemplated by the Agreement or in connection with any lender Consent; and (h) all obligations of any Acquired Company, whether interest bearing or otherwise, owed to any securityholder of the Company and or any Affiliate of any securityholder of the Company. For the avoidance of doubt, the $1,000,000 of grant funds provided to the Company by JobsOhio pursuant to that certain Grant Agreement dated as of January 6, 2015 shall not constitute Indebtedness under this Agreement.

"Indemnifying Party" has the meaning set forth in Section 10.7 of this Agreement.

"Indemnified Party" has the meaning set forth in Section 10.7 of this Agreement.

"Indemnity Escrow" has the meaning set forth in Section 1.5(c) of this Agreement.

"Indemnity Escrow Continuing Claim" has the meaning set forth in Section 10.6(a) of this Agreement.

"Indemnity Escrow Retained Amount" has the meaning set forth in Section 10.6(a) of this Agreement.

"Indemnitees" means the Parent Indemnitees and Holder Indemnitees.

"Information Statement" means an information statement prepared by the Company and relating to the vote by the stockholders of the Company on the adoption of this Agreement and the approval of the other transactions contemplated by the Agreement.

"Initial Indemnity Escrow Deposit" shall mean $18,000,000.

"Insider Payables" has the meaning set forth in Section 2.5(c) of this Agreement.

"Insider Receivables" has the meaning set forth in Section 2.5(c) of this Agreement.

"Intellectual Property" means any or all of the following and all rights in, arising out of, or associated therewith: (i) all United States, international and foreign Patents; (ii) all inventions (whether or not patentable), invention disclosures, improvements, trade secrets, proprietary information, know how, computer software programs (in both source code and object code form), technology, business methods, and technical data, and tangible or intangible proprietary information; (iii) all copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world; (iv) all industrial designs and any registrations and applications therefor throughout the world; (v) all trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world; (vi) all databases and data collections and all rights therein throughout the world; (vii) all moral and economic rights of authors and inventors, however denominated, throughout the world; (viii) all Web addresses, sites and domain names and numbers; and (ix) any similar or equivalent rights to any of the foregoing anywhere in the world.

"Joinder Agreements" means the Joinder, Acknowledgement and Release Agreements substantially in the form of Exhibit F to the Agreement.

"Joinder Holder" means each Effective Time Holder who has executed and delivered a Joinder Agreement, Warrant Surrender Agreement or Option Termination Agreement prior to the Closing.

"Key Employees" means the employees listed on Annex Schedule 11(k).

An individual shall be deemed to have "Knowledge" of a particular fact or other matter if such individual is actually aware of such fact or other matter. The Company shall be deemed to have "Knowledge" of a particular fact or other matter if any individual identified on Exhibit G has Knowledge of such fact or other matter or would have had Knowledge of such fact or other matter had such individual made reasonable inquiry of such individual's direct reports.

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

"Legal Requirement" means any federal, state, local, municipal, foreign, supranational or other law, statute, constitution, treaty, principle of common law, directive, resolution, ordinance, code, edict, writ, decree, rule, regulation, judgment, ruling, guidance, injunction or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority, and any rule, regulation or operating or technical standard or guidance issued, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any payment system in which any Acquired Company processes transactions.

"Letter of Transmittal" has the meaning set forth in Section 1.9(b) of this Agreement.

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

"made available to Parent" means (i) contained and accessible immediately prior to the date of this Agreement in the virtual data room hosted by ShareFile established by the Company in connection with the Merger to which Parent and its designated Representatives had unrestricted access during such period or (ii) provided directly to Parent or its Representatives.

"Material Adverse Effect" means any change, event, effect, claim, circumstance or matter (each, an "Effect") that (considered individually or together with all other Effects) has, or would reasonably be expected to have, a material adverse effect on the business, financial condition, assets, capitalization, business operations, results of operations or financial performance of the Acquired Companies, taken as a whole; *provided*, that, in no event shall any of the following Effects be taken into account in the determination of whether there has been, is or would reasonably be expected to be, a Material Adverse Effect: (i) any Effect resulting from conditions generally affecting the industries in which the Acquired Companies operate or from changes in general business, financial, political, capital market or economic conditions; (ii) any Effect arising in connection with any outbreak, continuation or escalation of any military conflict, declared or undeclared war, armed hostilities, or acts of foreign or domestic terrorism; (iii) any Effect arising in connection with any hurricane, flood, tornado, earthquake or other natural disaster, or national or international emergency; (iv) compliance with the terms of, or action or omission required by, this Agreement, or otherwise taken with the consent of Parent; (v) any breach by Parent or Merger Sub of this Agreement or the taking of any action by Parent or any of Parent's Affiliates; (vi) any changes or developments in GAAP or Legal Requirements or in the enforcement or interpretation thereof; (vii) any action required to be taken under applicable Legal Requirements, including any actions taken or required to be taken by the Company in order to obtain any approval or authorization for the consummation of the Merger under applicable antitrust or competition Legal Requirements; (viii) the announcement of this Agreement or the Merger, including the announcement of the identity of Parent, or any communication by Parent or any of its Affiliates regarding plans, proposals, expectations or projections with respect to the Acquired Companies, contractual or otherwise, with its customers, suppliers, distributors, partners, employees consultants or independent contractors, including the failure to obtain new customers or retain existing customers, disruptions in partnership or similar relationships, or loss of employees, in each case, to the extent resulting from such announcement or communications; or (ix) any failure by any Acquired Company to meet any internal or external projections, budgets, forecasts, or estimates in respect of revenue, profitability, cash flow or position, earnings or other financial or

operating metric for any period (but excluding, in each case, the underlying causes of such failure except to the extent such underlying causes (A) would otherwise be excepted from this definition or (B) relate solely to the short-term performance of the Acquired Companies); *provided*, *however*, that, in the case of clauses (i), (ii) and (iii) above, any such Effect shall be taken into account in determining whether there has been, is or would reasonably be expected to be, a Material Adverse Effect, if it has disproportionately impacted the Acquired Companies (relative to other participants in the industries in which the Acquired Companies operate), taken as a whole.

"Material Contracts" means each Acquired Company Contract

**(a)** which provides for indemnification of any officer, director, employee or agent;

**(b)** relating to the merger, consolidation, reorganization or any similar transaction involving or with respect to any of the Acquired Companies;

**(c)** relating to the acquisition, transfer, license, development or sharing of any technology, Intellectual Property (including any joint development agreement, technical collaboration agreement or similar agreement entered into by any of the Acquired Companies) to or from any of the Acquired Companies, other than any confidentiality agreements, consulting agreements, distribution agreements, manufacturing agreements, clinical trial agreements, and license for "shrink wrap" or similarly licensed software generally commercially available;

**(d)** relating to the acquisition, sale, spin-off or outsourcing of any Subsidiary or business unit or operation of any of the Acquired Companies;

**(e)** creating or relating to any partnership, joint venture, strategic alliance or any sharing of revenues, profits, losses, costs or Liabilities or similar arrangement;

**(f)** imposing any restriction on the ability of any of the Acquired Companies: (i) to compete with any other Person; (ii) to acquire any product or other asset or any services from any other Person, to sell any product or other asset to or perform any services for any other Person or to transact business or deal in any other manner with any other Person; (iii) involving the grant of "most favored nation" status to any Person or any exclusive rights to provide any service to any Person; or (iv) to provide any services;

**(g)** (i) granting exclusive rights to license, market, sell or deliver any of the products or services of the Acquired Companies; or (ii) otherwise requiring an exclusive relationship between any Acquired Company and any other Person;

**(h)** creating or involving any referral or agency relationship, distribution arrangement or franchise relationship;

**(i)** for the sale of any of the assets of any Acquired Company, other than in the ordinary course of business, or for the grant to any Person of any preferential rights to purchase any of the assets of any Acquired Company;

**(j)** involving any loan, guaranty, pledge, performance or completion bond or indemnity or surety arrangement or otherwise relating to the incurrence, assumption or guarantee of any Indebtedness by any Acquired Company or imposing an Encumbrance on any of the assets of any Acquired Company;

**(k)** relating to any liquidation or dissolution of any Acquired Company;

**(l)** that contemplates or involves, other than employee agreements or employee offer letters: (i) the payment or delivery of cash or other consideration by any Acquired Company in an amount or having an annual value in excess of $100,000; or (ii) the payment to or receipt by any Acquired Company of cash or other consideration in an amount having an annual value in excess of $100,000;

**(m)** relating to the lease of any material equipment, fixtures or other tangible assets;

**(n)** that was entered into outside the ordinary course of business of any of the Acquired Companies or that is otherwise material to the Acquired Companies, taken as a whole, along with all Contracts identified, or required to be identified, in Schedules 2.3(d), 2.3(e), 2.10(a), 2.21(c), 2.21(d) or 2.21(f) of the Disclosure Schedules.

"Merger" has the meaning set forth in the recitals to the Agreement.

"Merger Consideration" means: (a) the consideration that a Non-Dissenting Stockholder is entitled to receive in exchange for such Non-Dissenting Stockholder's shares of Outstanding Capital Stock pursuant to Section 1.5 of this Agreement; (b) the consideration that a holder of an Outstanding Warrant is entitled to receive in exchange for such Outstanding Warrant pursuant to Section 1.6(a) of this Agreement; and (c) the consideration of a holder of an In-the-Money Option is entitled to receive in exchange for such In-the Money Option pursuant to Section 1.7(a) of this Agreement.

"Merger Consideration Certificate" has the meaning set forth in Section 1.3(b)(iv) of this Agreement.

"Merger Sub" has the meaning set forth in the introductory paragraph of this Agreement.

"Net Indebtedness" means the aggregate amount of the Indebtedness *less* the aggregate amount of the Cash and Cash Equivalents.

"Net Indebtedness Escrow Shortfall" has the meaning set forth in Section 1.10(c)(ii) of this Agreement.

"Net Indebtedness Underpayment" has the meaning set forth in Section 1.10(c)(iii) of this Agreement.

"Net Working Capital Amount" (which can be positive or negative) means: (A) the sum of all of the assets of the Acquired Companies in the line item categories of current assets identified on Annex Schedule 11(n) as of the close of business on the day immediately preceding the Closing Date (excluding Tax assets and Cash and Cash Equivalents, but including any restricted cash or depository balance amounts which serve to collateralize credit cards or similar obligations); *minus* (B) the sum of all of the liabilities of the Acquired Companies in the line item categories of current liabilities identified on Annex Schedule 11(n) as of the close of business on the day immediately preceding the Closing Date (excluding Tax liabilities, any amount included in the Closing Net Indebtedness Amount and Company Transaction Expenses), in each case as determined in accordance with GAAP, using the policies, conventions, methodologies and procedures used by the Company in preparing the Company Financial Statements. For illustrative purposes only, attached as Annex Schedule 11(n) is a sample calculation of the Net Working Capital Amount as of June 30, 2016 (as opposed to the Closing Date).

"Non-Dissenting Stockholder" means each stockholder of the Company that does not perfect such stockholder's appraisal rights under the DGCL and is otherwise entitled to receive consideration pursuant to Section 1.5 of this Agreement.

"OFAC" has the meaning set forth in Section 2.29(b)(i) of this Agreement.

"Option Information" means (a) the name of the holder of such Company Option; (b) the total number of shares and class of Company Capital Stock that are subject to such Company Option; (c) the date on which such Company Option was issued and the term of such Company Option; and (d) the exercise price per share of Company Common Stock purchasable under such Company Option.

"Option Per Share Consideration" means (A) the Per Share Amount minus (B) the per share exercise price of an In-the-Money Option.

"Order" means any order, writ, subpoena, injunction, judgment, decree, ruling or award of any arbitrator or any court or other Governmental Authority.

"Outstanding Capital Stock" means each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time.

"Outstanding Warrant" has the meaning set forth in Section 1.6(a) of this Agreement.

"Parent" has the meaning set forth in the introductory paragraph of this Agreement.

"Parent Closing Balance Sheet" has the meaning set forth in Section 1.10(a) of this Agreement.

"Parent Closing Certificate" has the meaning set forth in Section 8.6 of this Agreement.

"Parent Closing Date Schedule" has the meaning set forth in Section 1.10(a) of this Agreement.

"Parent Cure Period" has the meaning set forth in Section 9.1(e) of this Agreement.

"Parent Indemnitees" means the following Persons: (a) Parent; (b) Parent's current and future Affiliates (including Merger Sub and, following the Merger, the Surviving Corporation); (c) the respective Representatives of the Persons referred to in clauses "(a)" and "(b)" above; and (d) the respective successors and assigns of the Persons referred to in clauses "(a)," "(b)" and "(c)" above; *provided*, *however*, that the Effective Time Holders shall not be deemed to be "Parent Indemnitees."

"Patents" means patents (including utility, utility model, plant and design patents, and certificates of invention), patent applications (including additions, provisional, national, regional and international applications, as well as original, continuation, continuation-in-part, divisionals, continued prosecution applications, reissues, and re-examination applications), patent or invention disclosures, registrations, applications for registrations, all patents, applications, documents and filings claiming priority to or serving as a basis for priority thereof, and any term extension or other governmental action which provides rights beyond the original expiration date of any of the foregoing.

"Paying Agent" means JPMorgan Chase Bank, National Association.

"Paying Agent Agreement" means the payment agent agreement to be entered into between the Surviving Corporation and the Paying Agent on the Closing Date, substantially in the form of Exhibit H to this Agreement.

"Payment Conditions" has the meaning set forth in Section 10.6(c) of this Agreement.

"Payment Fund" has the meaning set forth in Section 1.9(a) of this Agreement.

"Payment Programs" means Medicare, TRICARE, Medicaid, Worker's Compensation, Blue Cross/Blue Shield plans, and all other health maintenance organizations, preferred provider organizations, health benefit plans, health insurance plans, and other third party reimbursement and payment programs, including the Acquired Company Payment Programs.

"Payoff Letters" means: (a) one or more payoff letters and other evidence regarding the discharge of Indebtedness of the Acquired Companies and termination and release of Encumbrances related thereto, each dated no more than ten (10) Business Days prior to the Closing Date, to (i) satisfy such Indebtedness as of the Closing and (ii) terminate and release any Encumbrances related thereto; and (b) an invoice from each advisor or other service provider to any Acquired Company, dated no more than ten (10) Business Days prior to the Closing Date, with respect to all unpaid Company Transaction Expenses estimated to be due and payable to such advisor or other service provider, as the case may be, as of the Closing Date.

"Permitted Encumbrances" means: (i) statutory liens with respect to the payment of Taxes, in all cases which are not yet due or payable or being contested in good faith by appropriate proceedings properly instituted and diligently conducted; (ii) statutory liens of landlords, suppliers, mechanics, carriers, materialmen, warehousemen, service providers or workmen and other similar Encumbrances imposed by Legal Requirements created in the Ordinary Course of Business the existence of which could not constitute a default or breach under any of the Company's Contracts for amounts that are not yet delinquent; (iii) building, zoning, entitlement and other land use regulations imposed by any Governmental Authority with jurisdiction over the Owned Real Property; (iv) easements, conditions, covenants and restrictions that are of record with respect to the Real Property that do not and shall not adversely affect the value, use of current occupancy of the Real Property and (v) Encumbrances set forth on Annex Schedule 11(p)(1).

"Per Share Amount" shall be determined by *dividing*: (A) an amount equal to the Purchase Price *plus* the Aggregate Option Exercise Price *less* the Preferred Liquidation Amount *less* the Adjustment Escrow Amount *less* the Initial Indemnity Escrow Deposit *less* the Expense Fund *by* (B) the aggregate number of Fully Diluted Shares of Company Capital Stock (but excluding all shares of Company Preferred Stock that are designated as "Series D Preferred Stock" and shares of Series D Preferred Stock subject to Company Warrants).

"Person" means any individual, Entity or Governmental Authority.

"Personal Data" means any information that can be used to specifically identify a natural person (including but not limited to name, address, telephone number, electronic mail address, social security number or other government-issued number, bank account number or credit card number) and any special categories of personal information regulated under or covered under any applicable Legal Requirement.

"Post-Closing Date Transaction Bonuses" means those bonuses paid to employees of the Acquired Companies pursuant to the Equity Transition Plan and that are considered (i) Net Revenue Payments or Milestone Payments under the Equity Transition Plan or (ii) Closing Payments under the Equity Transition Plan that are subject to a delay in payment due to an escrow or purchase price adjustment.

"Post-Closing Representation" has the meaning set forth in Section 5.5(a) of this Agreement.

"Pre-Closing Period" has the meaning set forth in Section 4.1 of this Agreement.

"Pre-Closing Tax Period" means any Tax period ending on or before the Closing Date and that portion of any Straddle Period ending on (and including) the Closing Date.

"Preferred Liquidation Amount" means an amount equal to the sum of (A) the number of shares of Series A Preferred Stock outstanding at the Effective Time multiplied by $1.00 *plus* (B) the number of shares of Series B Preferred Stock outstanding at the Effective Time multiplied by $1.04 *plus* (C) the number of shares of Series C Preferred Stock outstanding at the Effective Time multiplied by $2.74 *plus* (D) the number of shares of Series D Preferred Stock referred to herein as Series D-1 Shares outstanding at the Effective Time *multiplied by* the Series D-1 Hurdle Return *plus* (E) the number of shares of Series D Preferred Stock referred to herein as Series D-2 Shares outstanding at the Effective Time *multiplied by* the Series D-2 Hurdle Return.

"Premises" means any building, plant, improvement or structure located on the Real Property.

"Privileged Materials" has the meaning set forth in Section 5.5(c) of this Agreement.

"Primary Care Providers" has the meaning set forth in Section 1.11(a) of this Agreement.

"Pro Rata Share" for each Effective Time Holder shall be determined by *dividing*: (A) the number of Fully Diluted Shares of Company Capital Stock held by such Effective Time Holder; *by* (B) the total number of Fully Diluted Shares of Company Capital Stock outstanding at the Effective Time.

"Prohibited Person" has the meaning set forth in Section 2.29(b)(i) of this Agreement.

"Properties" means the leasehold properties held or occupied by the Acquired Companies.

"Publicly Available Software" means each of (i) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (*e.g.*, GNU General Public License, Apache Software License, MIT License), or pursuant to similar licensing and distribution models and (ii) any software that requires as a condition of use, modification, hosting, and/or distribution of such software, or of other software used or developed with, incorporated into, derived from, or distributed with such software, that such software or other software (A) be disclosed or distributed in source code form; (B) be licensed for the purpose of making derivative works; (C) be redistributed, hosted or otherwise made available at no or minimal charge; or (D) be licensed, sold or otherwise made available on terms that (x) limit in any manner the ability to charge license fees or otherwise seek compensation in connection with marketing, licensing or distribution of such software or other software or (y) grant the right to decompile, disassemble, reverse engineer or otherwise derive the source code or underlying structure of such software or other software.

"Purchase Price" shall be: (A) $225,000,000, *minus* (B) the Estimated Closing Net Indebtedness Amount; *minus* (C) the aggregate amount of all Company Transaction Expenses; *minus* (D) the amount, if any, by which the Targeted Net Working Capital Amount exceeds the Estimated Net Working Capital Amount *plus* (E) the amount, if any, by which the Estimated Net Working Capital Amount exceeds the Targeted Net Working Capital Amount.

"Registered Intellectual Property" means all United States, international and foreign: (i) registered Patents; (ii) registered trademarks, service marks, applications to register trademarks, applications to register service marks, intent-to-use applications, or other registrations or applications related to trademarks; (iii) registered copyrights and applications for copyright registration; (iv) domain

name registrations and Internet number assignments; and (v) any other Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any Governmental Authority.

"Regulatory Approvals" means any approvals, clearances, licenses, Governmental Authorizations, applications, registrations or authorizations approved by or submitted to any Governmental Authority in connection with the business of any of the Acquired Companies, including Regulatory Authorizations and Acquired Company Regulatory Filings.

"Related Party" means: (a) each stockholder who holds more than five percent (5%) of an Acquired Company (other than, with respect to any Subsidiary of the Company, the Company); (b) each individual who is an officer or director of any of the Acquired Companies; (c) each member of the immediate family of each of the individuals referred to in clauses "(a)," and "(b)" above; and (d) any trust or other Entity (other than the Company) in which any one of the Persons referred to in clauses "(a)," "(b)" and "(c)" above holds (or in which more than one of such Persons collectively hold), beneficially or otherwise, a material voting, proprietary or equity interest.

"Representatives" means officers, directors, employees, agents, consultants, attorneys, accountants, advisors and other representatives of a Person.

"Required Merger Stockholder Vote" has the meaning set forth in Section 2.30 of this Agreement.

"Review Period" has the meaning set forth in Section 1.10(b)(i) of this Agreement.

"Section 280G" means Section 280G of the Code and the Treasury Regulations and related guidance promulgated thereunder.

"Section 280G Payments" has the meaning set forth in Section 5.2(b) of this Agreement.

"Securityholders' Agent" has the meaning set forth in Section 11.1(a) of this Agreement.

"Series D-1 Share" means a share of Company Preferred Stock designated as "Series D Preferred Stock" and issued pursuant to that certain Series D Preferred Stock Purchase Agreement, dated as of December 19, 2014.

"Series D-2 Share" means a share of Company Preferred Stock designated as "Series D Preferred Stock" and issued pursuant to that certain Series D Preferred Stock Purchase Agreement (Series D Extension), dated as of December 15, 2015.

"Specified Privileges" has the meaning set forth in Section 5.5(b) of this Agreement.

"Specified Representations" means (a) the representations and warranties set forth in Sections 2.1 (Organizational Matters), 2.3 (Capital Structure), 2.4 (Authority; Binding Nature of Agreement; Inapplicability of Anti-takeover Statutes), 2.20 (Tax Matters), and 2.31 (Brokers) of this Agreement; and (b) the representations, warranties, certifications and other statements and information set forth in the Merger Consideration Certificate.

"Stockholder" means a holder of Company Capital Stock.

"Straddle Period" means any taxable year or period beginning on or before and ending after the Closing Date.

"Study" has the meaning set forth in Section 1.11(b) of this Agreement.

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

"Surviving Corporation" has the meaning set forth in Section 1.1 of this Agreement.

"Targeted Net Working Capital Amount" means an amount equal to negative $1,634,382.

"Tax" (and, with correlative meaning, "Taxes") means: (i) any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, medical device, franchise, employment, payroll, withholding on amounts paid to or by any Person, alternative or add-on minimum, ad valorem, value-added, transfer, stamp, or environmental tax, escheat payments or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Governmental Authority.

"Tax Authority" means any Governmental Authority, having or purporting to exercise jurisdiction with respect to any Tax.

"Tax Return" means any return, report or similar statement filed or required to be filed with respect to any Tax (including any attached schedules or other attachment thereto and any amendment thereof), including any information return, claim for refund, amended return or declaration of estimated Tax.

"Tax Sharing Arrangement" means any written or unwritten agreement or arrangement providing for the allocation or payment of Tax Liabilities or for Tax benefits between or among members of any group of corporations that files, will file, or has filed Tax Returns on a combined, consolidated or unitary basis.

"Third Party Claim" has the meaning set forth in Section 10.7(a) of this Agreement.

"UK Bribery Act" has the meaning set forth in Section 2.29 of this Agreement.

"Unaudited Interim Balance Sheet" has the meaning set forth in Section 2.5(a) of this Agreement.

"Warrant Information" means (A) the name of the holder of such Company Warrant; (B) the class, series and total number of shares of Company Capital Stock that are subject to such Company Warrant and the class, series and number of shares of Company Capital Stock with respect to which such Company Warrant is immediately exercisable; (C) the date on which such Company Warrant was issued and the term of such Company Warrant; and (D) the exercise price per share of Company Preferred Stock purchasable under such Company Warrant.

"Warrant Surrender Agreement" has the meaning set forth in Section 1.6(a) of this Agreement.

"Working Capital Escrow Shortfall" has the meaning set forth in Section 1.10(c)(i) of this Agreement.

"Working Capital Shortfall" has the meaning set forth in Section 1.10(c)(i) of this Agreement.

"Working Capital Surplus" has the meaning set forth in Section 1.10(c)(ii) of this Agreement.

**Exhibit 10.2**

**EXECUTION VERSION**

J.P.Morgan

CREDIT AGREEMENT

dated as of

August 31, 2016

among

MYRIAD GENETICS, INC.

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.
as Administrative Agent

JPMORGAN CHASE BANK, N.A.,
as Sole Bookrunner and Sole Lead Arranger

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SCHEDULES:



EXHIBITS:

CREDIT AGREEMENT (this "Agreement") dated as of August 31, 2016 among MYRIAD GENETICS, INC., a Delaware corporation, the LENDERS from time to time party hereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

The parties hereto agree as follows:

## ARTICLE I

## Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR" when used in reference to any Loan or Borrowing, refers to such Loan, or the Loans comprising such Borrowing, bearing interest at a rate determined by reference to the Alternate Base Rate.

"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means JPMorgan Chase Bank, N.A. (including its branches and affiliates), in its capacity as administrative agent for the Lenders hereunder.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent Party" has the meaning assigned to such term in Section 9.01(d).

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, provided that for purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Rate (or if the LIBO Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day, subject to the interest rate floors set forth therein. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. For the avoidance of doubt, if the Alternate Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Percentage" means, with respect to any Lender, the percentage equal to a fraction the numerator of which is such Lender's Commitment and the denominator of which is the aggregate Commitments of all Lenders (if the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments); provided that in the case of Section 2.21 when a Defaulting Lender shall exist, any such Defaulting Lender's Commitment shall be disregarded in the calculation.

"Applicable Pledge Percentage" means 100% but 65% in the case of a pledge by the Borrower or any Subsidiary Guarantor of its Equity Interests in a Foreign Subsidiary that is a CFC or is a Disregarded Domestic Subsidiary.

"Applicable Rate" means, for any day, with respect to any Eurodollar Loan, 1.50% per annum, and with respect to any ABR Loan, 0.50% per annum.

"Approved Fund" has the meaning assigned to such term in Section 9.04(b).

"Assignment and Assumption" means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent and consented to by the Borrower (if required pursuant to the terms hereof), in the form of Exhibit A or any other form approved by the Administrative Agent.

"Assurex" means Assurex Health, Inc., a Delaware corporation.

"Assurex Acquisition" means the acquisition by the Borrower of Assurex pursuant to the terms of the Assurex Merger Agreement.

"Assurex Audited Financial Statements" has the meaning assigned to such term in Section 4.01(j)(ii).

"Assurex Material Adverse Effect" means any change, event, effect, claim, circumstance or matter (each, an "Effect") that (considered individually or together with all other Effects) has, or would reasonably be expected to have, a material adverse effect on the business, financial condition, assets, capitalization, business operations, results of operations or financial performance of Assurex and each Subsidiary (as defined in the Assurex Merger Agreement) of Assurex, taken as a whole; provided that, in no event shall any of the following Effects be taken into account in the determination of whether there has been, is or would reasonably be expected to be, a Material Adverse Effect: (i) any Effect resulting from conditions generally affecting the industries in which Assurex and its Subsidiaries (as defined in the Assurex Merger Agreement) operate or from changes in general business, financial, political, capital market or economic conditions, (ii) any Effect arising in connection with any outbreak, continuation or escalation of any military conflict, declared or undeclared war, armed hostilities, or acts of foreign or domestic terrorism, (iii) any Effect arising in connection with any hurricane, flood, tornado, earthquake or other natural disaster, or national or international emergency, (iv) compliance with the terms of, or action or omission required by, the Assurex Merger Agreement, or otherwise taken with the consent of the Borrower, (v) any breach by the Borrower or Myriad Merger Sub, Inc. of the Assurex Merger Agreement or the taking of any action by the Borrower or any of the Borrower's Affiliates, (vi) any changes or developments in GAAP or Legal Requirements (as defined in the Assurex Merger Agreement) or in the enforcement or interpretation thereof, (vii) any action required to be taken under applicable Legal Requirements (as defined in the Assurex Merger Agreement), including any actions taken or required to be taken by Assurex in order to obtain any approval or authorization for the consummation of the Assurex Acquisition under applicable antitrust or competition Legal Requirements (as defined in the Assurex

Merger Agreement), (viii) the announcement of the Assurex Merger Agreement or the Assurex Acquisition, including the announcement of the identity of the Borrower, or any communication by the Borrower or any of its Affiliates regarding plans, proposals, expectations or projections with respect to Assurex and its Subsidiaries (as defined in the Assurex Merger Agreement), contractual or otherwise, with its customers, suppliers, distributors, partners, employees consultants or independent contractors, including the failure to obtain new customers or retain existing customers, disruptions in partnership or similar relationships, or loss of employees, in each case, to the extent resulting from such announcement or communications, or (ix) any failure by Assurex or any of its Subsidiaries (as defined in the Assurex Merger Agreement) to meet any internal or external projections, budgets, forecasts, or estimates in respect of revenue, profitability, cash flow or position, earnings or other financial or operating metric for any period (but excluding, in each case, the underlying causes of such failure except to the extent such underlying causes (A) would otherwise be excepted from this definition or (B) relate solely to the short-term performance of Assurex and its Subsidiaries (as defined in the Assurex Merger Agreement)); provided, however, that, in the case of clauses (i), (ii) and (iii) above, any such Effect shall be taken into account in determining whether there has been, is or would reasonably be expected to be, a Material Adverse Effect, if it has disproportionately impacted Assurex and its subsidiaries (relative to other participants in the industries in which Assurex and its Subsidiaries (as defined in the Assurex Merger Agreement) operate), taken as a whole.

"Assurex Merger Agreement" means the Agreement and Plan of Merger dated August 3, 2016 among the Borrower, Myriad Merger Sub, Inc., Assurex and certain other parties thereto, including all exhibits, schedules and annexes thereto, in each case as amended pursuant to the terms hereof.

"Assurex Unaudited Financial Statements" has the meaning assigned to such term in Section 4.01(j)(iii).

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Banking Services" means each and any of the following bank services provided to the Borrower or any Subsidiary by any Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, commercial credit cards and purchasing cards), (b) stored value cards, (c) merchant processing services and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts and interstate depository network services).

"Banking Services Agreement" means any agreement entered into by the Borrower or any Subsidiary in connection with Banking Services.

"Banking Services Obligations" means any and all obligations of the Borrower or any Subsidiary, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

"Bankruptcy Event" means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator,

custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" means Myriad Genetics, Inc., a Delaware corporation.

"Borrower Audited Financial Statements" has the meaning assigned to such term in Section 4.01(j)(i).

"Borrower Unaudited Financial Statements" has the meaning assigned to such term in Section 4.01(j)(iii).

"Borrowing" means a Term Loan of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"Borrowing Request" means a request by the Borrower for a Borrowing in accordance with Section 2.03 in the form attached hereto as Exhibit F-1.

"Burdensome Restrictions" means any consensual encumbrance or restriction of the type described in clause (a) or (b) of Section 6.08.

"BRAC Analysis Testing Agreement" means any written agreement by and among the Borrower and its Subsidiaries and the payors party thereto which agreement provides for the payment or reimbursement of the service fees charged by the Borrower and its Subsidiaries for the clinical laboratory diagnostic testing services to determine the status of an individual's BRCA1 and BRCA2 genes for the purpose of determining hereditary cancer risk.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City, New York are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollars in the London interbank market.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital lease obligations on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"CFC" means a controlled foreign corporation as defined in Section 957 of the Code.

"Change in Control" means (a) any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by directors so nominated; or (c) the occurrence of a change in control, or other similar provision, as defined in any agreement or instrument evidencing any Material Indebtedness (triggering a default or mandatory prepayment, which default or mandatory prepayment has not been waived in writing, in each case, after giving effect to any applicable grace or cure periods).

"Change in Law" means the occurrence, after the date of this Agreement (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rules, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law" regardless of the date enacted, adopted, issued or implemented.

"Class", when used in reference to any Loan or Borrowing, refers to Term Loans.

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

"Collateral" means any and all property owned, leased or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of Administrative Agent, on behalf of itself and the Secured Parties, to secure the Secured Obligations; provided that, notwithstanding anything to the contrary, (a) the Collateral shall exclude (including exclusion from any applicable Collateral Documents) the following: (i) any (a) fee-owned real property and leasehold interests (with no requirement to obtain mortgages, landlord waivers, estoppels, or collateral access letters), (ii) motor vehicles and other assets subject to certificates of title, (iii) all commercial tort claims that, individually or in the aggregate, do not exceed $1,000,000, (iv) any governmental licenses or state or local franchises, charters and authorizations to the extent security interest is prohibited thereby, (v) pledges and security interests prohibited or restricted by applicable law (including any requirement to obtain the consent or any governmental authority or third party), (vi) any lease, license or agreement or any property subject to a purchase money security interest or similar arrangement to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money agreement or create a right of termination in favor of any other party thereto after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable law, other than proceeds or receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or other applicable law notwithstanding

such prohibition, (vii) any assets to the extent a security interest in such assets would result in adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent, (viii) letter of credit rights, except to the extent constituting a support obligation for other Collateral as to which perfection of the security interest in such other Collateral is accomplished solely by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a Uniform Commercial Code financing statement), (ix) cash and cash equivalents (other than the proceeds of Collateral as to which perfection of the security interest in such proceeds is accomplished solely by the filing of a UCC financing statement), deposit, securities and commodities accounts (including securities entitlements and related assets), (x) any intent-to-use applicable trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law and (xi) any immaterial intellectual property and rights therein (the foregoing described in clauses (i) through (xi) are, collectively, the "Excluded Assets"), (b) assets will be excluded from the Collateral in circumstances where the cost of obtaining a security interest in such assets exceeds the practical benefit to the Lenders afforded thereby as reasonably determined by the Administrative Agent (in consultation with the Borrower), and (c) the Borrower and Guarantors shall not be required, nor shall the Administrative Agent be authorized, to take any action in any non-U.S. jurisdiction in order to create any security interests in assets located or titled outside the U.S. or to perfect any security interests in such assets, including, without limitation, any intellectual property registered in any non-U.S. jurisdiction or any equity interests of any subsidiaries organized in any non-U.S. jurisdiction (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction).

"Collateral Documents" means, collectively, the Security Agreement and all other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, subordination agreements, pledges, powers of attorney, and assignments and all other written matter whether heretofore, now, or hereafter executed by the Borrower or any of its Subsidiaries and delivered to the Administrative Agent.

"Commitment" means, with respect to each Lender, such Lender's Term Loan Commitment. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption or other documentation contemplated hereby pursuant to which such Lender shall have assumed its Commitment, as applicable.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Communications" has the meaning assigned to such term in Section 9.01(d).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated EBITDA" means, with reference to any period, (a) Consolidated Net Income *plus*, (b) without duplication and to the extent deducted in determining Consolidated Net Income, the sum of (i) Consolidated Interest Expense, (ii) expense for income taxes paid or accrued, (iii) depreciation, (iv) amortization, (v) extraordinary, unusual or non-recurring (A) non-cash charges, fees, expenses or losses incurred and (B) cash charges, fees, expenses or losses incurred, including, in each case, without limitation, any fees and expenses incurred in connection with Permitted Acquisitions, offering or issuance of Equity Interests, dispositions, Restricted Payments, recapitalization, restructurings,

integration of acquisitions, incurrence of Indebtedness (including pursuant to the Loan Documents and any amendments, waivers or any refinancings of any Indebtedness), other investments and litigation, in each case, to the extent not prohibited by this Agreement and whether or not such transactions are consummated; provided that such charges, expenses or losses added back pursuant to the foregoing clause (v)(B) may not exceed 15% of Consolidated EBITDA (calculated without giving effect to cost savings addbacks under such clause (v)(B) during any rolling four-quarter period), (vi) non-cash expenses (including stock based compensation), (vii) fees and expenses paid to the Credit Parties under the Loan Documents; (viii) losses from currency exchange transactions and (ix) fees and expenses incurred in connection with the Assurex Acquisition, *minus*, (x) to the extent included in determining Consolidated Net Income, the sum of (1) interest income, (2) income tax credits and refunds (to the extent not netted from tax expense), (3) any cash payments made during such period in respect of items described in clauses (v)(A) or (vi) above subsequent to the fiscal quarter in which the relevant non-cash expenses or losses were incurred, (4) extraordinary, unusual or non-recurring income or gains realized other than in the ordinary course of business and (5) gains from currency exchange transactions, all calculated for the Borrower and its Subsidiaries in accordance with GAAP on a consolidated basis. For the purposes of calculating Consolidated EBITDA (other than in connection with any calculation of the Interest Coverage Ratio) for any period of four consecutive fiscal quarters (each such period, a "Reference Period"), (i) if at any time during such Reference Period the Borrower or any Subsidiary shall have made any Material Disposition, Consolidated EBITDA for such Reference Period shall be calculated after giving effect thereto on a pro forma basis as if such Material Disposition occurred on the first day of such Reference Period, and (ii) if during such Reference Period the Borrower or any Subsidiary shall have made a Material Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving effect thereto on a pro forma basis as if such Material Acquisition occurred on the first day of such Reference Period.

"Consolidated Interest Expense" means, with reference to any period, the interest expense (including without limitation interest expense under Capital Lease Obligations that is treated as interest in accordance with GAAP) of the Borrower and its Subsidiaries calculated on a consolidated basis for such period in accordance with GAAP (including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers acceptance financing and net costs under interest rate Swap Agreements to the extent such net costs are allocable to such period in accordance with GAAP). In the event that the Borrower or any Subsidiary shall have completed a Material Acquisition or a Material Disposition since the beginning of the relevant period, Consolidated Interest Expense (other than in connection with any calculation of the Interest Coverage Ratio) shall be determined for such period on a pro forma basis as if such acquisition or disposition, and any related incurrence or repayment of Indebtedness, had occurred at the beginning of such period.

"Consolidated Net Income" means, with reference to any period, the net income (or loss) of the Borrower and its Subsidiaries calculated in accordance with GAAP on a consolidated basis (without duplication) for such period; provided that there shall be excluded any income (or loss) of any Person other than the Borrower or a Subsidiary, but any such income so excluded may be included in such period or any later period to the extent of any cash dividends or distributions actually paid in the relevant period to the Borrower or any wholly owned Subsidiary of the Borrower.

"Consolidated Total Assets" means, as of the date of any determination thereof, total assets of the Borrower and its Subsidiaries calculated in accordance with GAAP on a consolidated basis as of such date.

"Consolidated Total Indebtedness" means at any date the sum, without duplication, of (a) the aggregate Indebtedness of the Borrower and its Subsidiaries calculated on a consolidated basis as of such date in accordance with GAAP, (b) the aggregate amount of Indebtedness of the Borrower and its

Subsidiaries relating to the maximum drawing amount of all letters of credit and bankers acceptances outstanding and (c) the aggregate amount of Indebtedness of the type referred to in clauses (a) or (b) hereof of another Person guaranteed by the Borrower or any of its Subsidiaries.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms "Controlling" and "Controlled" have meanings correlative thereto.

"Credit Event" means a Borrowing.

"Credit Party" means the Administrative Agent or any other Lender.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) [intentionally omitted] or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by a Credit Party or the Borrower, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the receipt by such Credit Party or the Borrower, as applicable, of such certification in form and substance satisfactory to the Administrative Agent, or (d) has become, or has a Lender Parent that has become, the subject of (A) a Bankruptcy Event or (B) a Bail-In Action.

"Disregarded Domestic Subsidiary" means a Domestic Subsidiary that is either disregarded as an entity separate from its owner under § 301.7701-3 of the United States Treasury Regulations or is treated as a partnership for U.S. federal income tax purposes, in each case, if substantially all of the assets of such Domestic Subsidiary consist of Equity Interests or Indebtedness of one or more CFCs (directly or indirectly through another entity disregarded as an entity separate from its owner under § 301.7701-3 of the United States Treasury Regulations) and any other assets incidental thereto.

"Dollars" or "$" refers to lawful money of the United States of America.

"Domestic Subsidiary" means a Subsidiary organized under the laws of a jurisdiction located in the United States of America.

"ECP" means an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

"EEA Financial Institution" means (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" means any electronic system, including e-mail, e-fax, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing from such Person.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the "minimum funding standard" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of the Borrower or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition upon the Borrower or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Eurodollar" when used in reference to any Loan or Borrowing, means that such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

"Event of Default" has the meaning assigned to such term in Article VII.

"Excluded Domestic Subsidiary" means (a) any Disregarded Domestic Subsidiary and (b) any Domestic Subsidiary that is a direct or indirect subsidiary of a Foreign Subsidiary that is a CFC.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Specified Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Specified Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an ECP at the time the Guarantee of such Loan Party or the grant of such security interest becomes effective with respect to such Specified Swap Obligation. If a Specified Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Specified Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Subsidiary" means any Subsidiary that constitutes or more of the following: (i) an Excluded Domestic Subsidiary; (ii) a captive insurance Subsidiary; (iii) a not-for-profit Subsidiary; (iv) a special purposes entity formed to participate in a securitization, structured finance transaction or limited recourse financing; (v) a Subsidiary where a guaranty therefrom is prohibited or restricted by applicable law whether on the Effective Date or thereafter or by contract existing on the Effective Date or, with respect to any Subsidiary acquired after the Effective Date, by contract existing when such Subsidiary was acquired (including any requirement to obtain consent from a third party (including any applicable Governmental Authority)), or would result in adverse tax consequences as reasonably determined by Borrower; or (vi) a Subsidiary where the Borrower and the Administrative Agent reasonably agree that the cost of providing such guaranty is excessive in relation to the value afforded thereby.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f) and (d) any U.S. Federal withholding Taxes imposed under FATCA.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code and any law, regulation or practice adopted pursuant to any such intergovernmental agreement.

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions (as determined in such manner as the NYFRB shall set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate. For the avoidance of doubt, if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Fee Letter" means, that certain Fee Letter, dated as of August 3, 2016, by and among the Borrower and the Administrative Agent.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

"First Tier Foreign Subsidiary" means each Foreign Subsidiary with respect to which the Borrower and the Subsidiary Guarantors directly owns or Controls more than 50% of such Foreign Subsidiary's issued and outstanding Equity Interests.

"Foreign Lender" means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

"Foreign Subsidiary" means any Subsidiary which is not a Domestic Subsidiary.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Hostile Acquisition" means (a) the acquisition of the Equity Interests of a Person through a tender offer or similar solicitation of the owners of such Equity Interests which has not been approved (prior to such acquisition) by the board of directors (or any other applicable governing body) of such Person or by similar action if such Person is not a corporation and (b) any such acquisition as to which such approval has been withdrawn.

"Impacted Interest Period" has the meaning assigned to such term in the definition of "LIBO Rate".

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding trade payables and current accounts payable incurred in the ordinary course of business), to the extent then due and payable in accordance with the terms of the agreement applicable thereto, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a) hereof, Other Taxes.

"Ineligible Institution" has the meaning assigned to such term in Section 9.04(b).

"Interest Coverage Ratio" means, at any date, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense paid in cash, in each case, for the period of four (4) consecutive fiscal quarters ended on such date (or, if such date is not the last day of a fiscal quarter, ended on the last day of the fiscal quarter most recently ended prior to such date for which financial statements have been delivered pursuant to Section 5.01(a) or (b) (or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 5.01(a) or (b), the most recent financial statements referred to in Section 3.04), all calculated for the Borrower and its Subsidiaries on a consolidated basis.

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.08 in the form attached hereto as Exhibit F-2.

"Interest Payment Date" means (a) with respect to any ABR Loan, the last day of each March, June, September and December and the Maturity Date, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and the Maturity Date.

"Interest Period" means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Interpolated Rate" means, at any time, for any Interest Period, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBOR Screen Rate for the longest period (for which the LIBOR Screen Rate is available for the applicable currency) that is shorter than the Impacted Interest Period and (b) the LIBOR Screen Rate for the shortest period (for which the LIBOR Screen Rate is available for the applicable currency) that exceeds the Impacted Interest Period, in each case, at such time.

"IRS" means the United States Internal Revenue Service.

"Lead Arranger" means JPMorgan Chase Bank, N.A. in its capacity as sole lead arranger and sole bookrunner for the credit facility evidenced by this Agreement.

"Lender Parent" means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lenders" means the Persons listed on Schedule 2.01 and any other Person that shall have become a Lender hereunder pursuant to an Assignment and Assumption or other documentation contemplated hereby, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption or other documentation contemplated hereby.

"Leverage Ratio" means, at any date, the ratio of (a) Consolidated Total Indebtedness as of such date to (b) Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ended on such date (or, if such date is not the last day of a fiscal quarter, ended on the last day of the fiscal quarter most recently ended prior to such date for which financial statements have been delivered pursuant to Section 5.01(a) or (b) (or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 5.01(a) or (b), the most recent financial statements referred to in Section 3.04), all calculated for the Borrower and its Subsidiaries on a consolidated basis.

"LIBO Rate" means, with respect to any Eurodollar Borrowing for any applicable Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for Dollars for a period equal in length to such Interest Period as displayed on page LIBOR01 of the Reuters screen or, in the event such rate does not appear on such Reuters page, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by the Administrative Agent from time to time in its reasonable discretion (in each case the "LIBOR Screen Rate") at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that, if the LIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; provided, further, that if a LIBOR Screen Rate shall not be available at such time for such Interest Period (the "Impacted Interest Period"), then the LIBO Rate for such Interest Period shall be the Interpolated Rate; provided, that, if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. It is understood and agreed that all of the terms and conditions of this definition of "LIBO Rate" shall be subject to Section 2.14.

"LIBOR Screen Rate" has the meaning assigned to such term in the definition of "LIBO Rate".

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" means this Agreement, any promissory notes issued pursuant to Section 2.10(e), the Collateral Documents, the Subsidiary Guaranty, and all other agreements, instruments, documents and certificates identified in Section 4.01 executed and delivered to, or in favor of, the Administrative Agent or any Lenders and including all other pledges, powers of attorney, consents, assignments, contracts, letter of credit agreements, UCC filings, and any other documents prepared in connection with the other Loan Documents, if any and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Parties" means, collectively, the Borrower and the Subsidiary Guarantors.

"Loans" means the loans made by the Lenders to the Borrower pursuant to this Agreement.

"Material Acquisition" means any acquisition of property or series of related acquisitions of property that (a) constitutes (i) assets comprising all or substantially all or any significant portion of a business or operating unit of a business, or (ii) all or substantially all of the common stock or other Equity Interests of a Person, and (b) involves the payment of consideration by the Borrower and its Subsidiaries in excess of $25,000,000.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations or financial condition of the Loan Parties, taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to perform any of their obligations under this Agreement or any other Loan Document or (c) the validity or enforceability of this Agreement or any and all other Loan Documents or the material rights or remedies of the Administrative Agent and the Lenders thereunder.

"Material Disposition" means any sale, transfer or disposition of property or series of related sales, transfers, or dispositions of property that yields gross proceeds to the Borrower or any of its Subsidiaries in excess of $25,000,000.

"Material Domestic Subsidiary" means each Domestic Subsidiary (a) which, as of the most recent fiscal quarter of the Borrower, for the period of four consecutive fiscal quarters then ended, for which financial statements have been delivered pursuant to Section 5.01(a) or (b) (or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 5.01(a) or (b), the most recent financial statements referred to in Section 3.04), contributed greater than five percent (5%) of Consolidated EBITDA for such period or (b) which contributed greater than five percent (5%) of Consolidated Total Assets as of such date; provided that, if at any time the aggregate amount of Consolidated EBITDA or Consolidated Total Assets attributable to all Domestic Subsidiaries that are not Material Domestic Subsidiaries exceeds ten percent (10%) of Consolidated EBITDA for any such period or ten percent (10%) of Consolidated Total Assets as of the end of any such fiscal quarter, the Borrower (or, in the event the Borrower has failed to do so within ten (10) Business Days, the Administrative Agent) shall designate sufficient Domestic Subsidiaries as "Material Domestic Subsidiaries" to eliminate such excess, and such designated Subsidiaries shall for all purposes of this Agreement constitute Material Domestic Subsidiaries.

"Material Indebtedness" means Indebtedness (other than the Loans), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding $40,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Material Subsidiary" means each Subsidiary (a) which, as of the most recent fiscal quarter of the Borrower, for the period of four consecutive fiscal quarters then ended, for which financial statements have been delivered pursuant to Section 5.01(a) or (b) (or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 5.01(a) or (b), the most recent financial statements referred to in Section 3.04), contributed greater than five percent (5%) of Consolidated EBITDA for such period or (b) which contributed greater than five percent (5%) of Consolidated Total Assets as of such date.

"Maturity Date" means August 31, 2017.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"NYFRB" means the Federal Reserve Bank of New York

"NYFRB Rate" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Obligations" means all unpaid principal of and accrued and unpaid interest on the Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Borrower and its Subsidiaries to any of the Lenders, the Administrative Agent, or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or other instruments at any time evidencing any thereof.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19(b)).

**"**Overnight Bank Funding Rate**"** means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.–managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

"Participant" has the meaning assigned to such term in Section 9.04(c).

"Participant Register" has the meaning assigned to such term in Section 9.04(c).

"Patriot Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Acquisition" means any acquisition (whether by purchase, merger, consolidation or otherwise but excluding in any event a Hostile Acquisition) or series of related acquisitions by the Borrower or any Subsidiary of (i) all or substantially all the assets of or (ii) all or substantially all the Equity Interests in, a Person or division or line of business of a Person, if, at the time of and immediately after giving effect thereto:

(a) such Person or division or line of business is engaged in the same or a similar line of business as the Borrower and the Subsidiaries or business reasonably related thereto;

(b) all actions required, if any, to be taken with respect to such acquired or newly formed Subsidiary under Section 5.09 shall have been taken or shall be taken not later than ninety (90) days after such acquisition;

(c) the Borrower and the Subsidiaries are in compliance, on a pro forma basis, with the covenants contained in Section 6.11 recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available, as if such acquisition (and any related incurrence or repayment of Indebtedness, with any new Indebtedness being deemed to be amortized over the applicable testing period in accordance with its terms) had occurred on the first day of each relevant period for testing such compliance and, if the aggregate consideration paid in respect of such acquisition exceeds $30,000,000, the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer or other executive officer of the Borrower to such effect, together with, to the extent available, all relevant financial information, statements and projections requested by the Administrative Agent;

(d) in the case of a merger or consolidation involving (I) the Borrower, the Borrower is the surviving entity of such merger and/or consolidation and (II) any Subsidiary and not the Borrower, a Subsidiary is the surviving entity of such merger and/or consolidation; and

(e) if the Leverage Ratio immediately before or immediately after giving effect to such acquisition exceeds 2.50 to 1.00 (giving pro forma effect to such acquisition), based on the financial statements most recently delivered pursuant to Section 5.01(a) or (b) (or, prior to the delivery of any such financial statements, the last fiscal quarter included in the financial statements of the Borrower and its Subsidiaries referred to in Section 3.04), as applicable, the aggregate consideration paid for such acquisition (including the assumption of any Indebtedness), when taken together with the aggregate consideration paid for all other Permitted Acquisitions during the applicable calendar year in which such acquisition is consummated, shall not exceed $50,000,000 (it being understood and agreed that, for the avoidance of doubt, any Permitted Acquisition made pursuant to the immediately following proviso shall not be included for purposes of determining compliance with the foregoing dollar limitation); provided, that no such dollar limitation shall apply when the Leverage Ratio, immediately before and after giving effect to such acquisition, equals or is less than 2.50 to 1.00 (giving pro forma effect to such acquisition), based on the financial statements most recently delivered pursuant to Section 5.01(a) or (b) (or, prior to the delivery of any such financial statements, the last fiscal quarter included in the financial statements of the Borrower and its Subsidiaries referred to in Section 3.04), as applicable.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlord's, supplier's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

(g) Liens arising by virtue of any contractual, statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit of cash and securities in favor of bank, other depository institutions, and brokerage firms;

(h) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business of the Borrower or any Subsidiary; and

(i) Liens in favor of collecting banks arising under Section 4-210 of the Uniform Commercial Code.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's;

(c) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(d) investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(e) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(f) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $2,500,000,000;

(g) cash; and

(h) other investments consistent with Borrower's Investment Policy, as provided to the Administrative Agent prior to the Effective Date.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform" means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"Pledge Subsidiary" means (i) each Domestic Subsidiary other than a Domestic Subsidiary that is a direct or indirect subsidiary of a Foreign Subsidiary that is a CFC and (ii) each First Tier Foreign Subsidiary.

"Prime Rate" means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"Recipient" means (a) the Administrative Agent and (b) any Lender, as applicable.

"Register" has the meaning assigned to such term in Section 9.04(b).

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, advisors and representatives of such Person and such Person's Affiliates.

"Required Lenders" means, subject to Section 2.21, at any time, Lenders having outstanding Term Loans representing more than 50% of the aggregate principal amount of all outstanding Term Loans.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any Subsidiary or any option, warrant or other right to acquire any such Equity Interests in the Borrower or any Subsidiary.

"Restricted Payment Requirements" means, with respect to any Restricted Payment made by the Borrower or any Subsidiary in reliance upon Section 6.07(d), the following:

(a) no Event of Default has occurred and is continuing immediately prior to making such Restricted Payment or would arise immediately after giving effect (including giving effect on a pro forma basis) thereto; and

(b) there shall be (1) no dollar limit on Restricted Payments made when the Leverage Ratio is less than or equal to 2.50 to 1.00 immediately before and immediately after giving effect (including giving effect on a pro forma basis) to such Restricted Payment (based on the most recently delivered the financial statements under Section 5.01(a) or (b) (or, prior to the delivery of any such financial statements, the last fiscal quarter included in the financial statements of the Borrower and its Subsidiaries referred to in Section 3.04), as applicable), and (2) an aggregate dollar limit of $25,000,000 per calendar year with respect to Restricted Payments made when the Leverage Ratio exceeds 2.50 to 1.00 immediately before and immediately after giving effect (including giving effect on a pro forma basis) to such Restricted Payment (based on the most recently delivered the financial statements under Section 5.01(a) or (b) (or, prior to the delivery of any such financial statements, the last fiscal quarter included in the financial statements of the Borrower and its Subsidiaries referred to in Section 3.04), as applicable (it being understood and agreed that, for the avoidance of doubt, any Restricted Payment made pursuant to clause (b)(1) above shall not be included for purposes of determining compliance with this clause (b)(2)).

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sale and Leaseback Transaction" means any sale or other transfer of any property or asset by any Person with the intent to lease such property or asset as lessee.

"Sanctioned Country" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or any other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or any other relevant sanctions authority.

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

"Secured Obligations" means all Obligations, together with all Swap Obligations and Banking Services Obligations owing to one or more Lenders or their respective Affiliates; provided that the definition of "Secured Obligations" shall not create or include any guarantee by any Loan Party of (or grant of security interest by any Loan Party to support, as applicable) any Excluded Swap Obligations of such Loan Party for purposes of determining any obligations of any Loan Party.

"Secured Parties" means the holders of the Secured Obligations from time to time and shall include (a) each Lender in respect of its Loans respectively, (b) the Administrative Agent and the Lenders in respect of all other present and future obligations and liabilities of the Borrower and each Subsidiary of every type and description arising under or in connection with this Agreement or any other Loan Document, (c) each Lender and Affiliate of such Lender in respect of Swap Agreements and Banking Services Agreements entered into with such Person by the Borrower or any Subsidiary, (d) each indemnified party under Section 9.03 in respect of the obligations and liabilities of the Borrower to such Person hereunder and under the other Loan Documents, and (e) their respective successors and (in the case of a Lender, permitted) transferees and assigns.

"Security Agreement" means the Pledge and Security Agreement (including any and all supplements thereto) to be entered into between the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties as contemplated by Section 5.09, and any other pledge or security agreement entered into, by any other Loan Party (as required by this Agreement or any other Loan Document), or any other Person, as the same may be amended, restated or otherwise modified from time to time.

"Securities Act" means the United States Securities Act of 1933.

"Solvent" means, in reference to any Person, (a) the fair value of the assets of such Person and its Subsidiaries, taken as a whole, at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of such Person and its Subsidiaries, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) such Person and its Subsidiaries, taken as a whole, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) such Person and its Subsidiaries, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

"Specified Ancillary Obligations" means all obligations and liabilities (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) of any of the Subsidiaries, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, to the Lenders or any of their Affiliates under any Swap Agreement or any Banking Services Agreement.

"Specified Representations" means those representations and warranties made in Sections 3.01(a), 3.02, 3.03(b) (solely with respect to each Loan Party), 3.03(c)(i) (solely with respect to the Loan Documents), 3.03(d), 3.08, 3.12, 3.16, 3.19 and 3.20.

"Specified Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D of the Board. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D of the Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Indebtedness" means any Indebtedness of the Borrower or any Subsidiary the payment of which is subordinated to payment of the obligations under the Loan Documents.

"Subordinated Indebtedness Documents" means any document, agreement or instrument evidencing any Subordinated Indebtedness or entered into in connection with any Subordinated Indebtedness.

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any subsidiary of the Borrower.

"Subsidiary Guarantor" means each Material Domestic Subsidiary that is a party to the Subsidiary Guaranty. The Subsidiary Guarantors on the Effective Date are identified as such in Schedule 3.01 hereto.

"Subsidiary Guaranty" means that certain Guaranty dated as of the Effective Date (including any and all supplements thereto) and executed by each Subsidiary Guarantor party thereto, as amended, restated, supplemented or otherwise modified from time to time.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

"Swap Obligations" means any and all obligations of the Borrower or any Subsidiary, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any such Swap Agreement transaction.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Lender" means, as of any date of determination, each Lender having a Term Loan Commitment or that holds Term Loans.

"Term Loan Commitment" means (a) as to any Term Lender, the aggregate commitment of such Term Lender to make Term Loans as set forth on Schedule 2.01 or in the most recent Assignment Agreement executed by such Term Lender and (b) as to all Term Lenders, the aggregate commitment of all Term Lenders to make Term Loans, which aggregate commitment shall be $200,000,000 on the date of this Agreement. After advancing the Term Loan, each reference to a Term Lender's Term Loan Commitment shall refer to that Term Lender's Applicable Percentage of the Term Loans.

"Term Loan" means a Loan made pursuant to Section 2.01.

"Transactions" means (a) the Assurex Acquisition, (b) the refinancing of certain Indebtedness of Assurex and its Subsidiaries as contemplated by Section 4.01(g), (c) the execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, (d) the borrowing of Loans and other credit extensions and the use of the proceeds thereof and (e) the payment of fees, commissions, transaction costs and expenses incurred in connection with each of the foregoing.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"Unliquidated Obligations" means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (b) any other obligation (including any guarantee) that is contingent in nature at such time; or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" means any Loan Party and the Administrative Agent.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Term Loan") or by Type (e.g., a "Eurodollar Loan") or by Class and Type (e.g., a "Eurodollar Term Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Term Borrowing") or by Type (e.g., a "Eurodollar Borrowing") or by Class and Type (e.g., a "Eurodollar Term Borrowing").

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The word "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders and decrees, of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented and/or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, restated, amended and restated, supplemented and/or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) 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 hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP; Pro Forma Calculations. (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the

Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein, (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof and (iii) without giving effect to any changes in GAAP occurring after the Effective Date, the effect of which would be to cause leases which would be treated as operating leases under GAAP as of the Effective Date to be treated as capital leases under GAAP.

(b) All pro forma computations required to be made hereunder giving effect to any acquisition or disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction shall in each case be calculated giving pro forma effect thereto (and, in the case of any pro forma computation made hereunder to determine whether such acquisition or disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction is permitted to be consummated hereunder, to any other such transaction consummated since the first day of the period covered by any component of such pro forma computation and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive fiscal quarters ending with the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, ending with the last fiscal quarter included in the financial statements referred to in Section 3.04), and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of (but without giving effect to any synergies or cost savings) and any related incurrence or reduction of Indebtedness, all in accordance with Article 11 of Regulation S-X under the Securities Act. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Agreement applicable to such Indebtedness).

SECTION 1.05. Status of Obligations. In the event that the Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, the Borrower shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent on behalf of the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Administrative Agent on behalf of the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

ARTICLE II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Term Lender with a Term Loan Commitment (severally and not jointly) agrees to make a Term Loan to the Borrower in Dollars on the Effective Date, in an amount equal to such Lender's Term Loan Commitment by making immediately available funds available to the Administrative Agent's designated account, not later than the time specified by the Administrative Agent.

SECTION 2.02. Loans and Borrowings. (a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. The Term Loans shall amortize as set forth in Section 2.10.

(b) Subject to Section 2.14, each Term Loan Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $250,000 and not less than $500,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $250,000 and not less than $500,000.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, telecopy or other electronic communication to the Administrative Agent of a written Borrowing Request signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate principal amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. [Intentionally Omitted].

SECTION 2.05. [Intentional Omitted].

SECTION 2.06. [Intentionally Omitted].

SECTION 2.07. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided that Term Loans shall be made as provided in Section 2.01. The Administrative Agent will make such Loans available to the Borrower by transfer of immediately available funds, to an account of the Borrower designated by the Borrower in the applicable Borrowing Request.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to the applicable Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.08. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy or other electronic communication to the Administrative Agent of a written Interest Election Request signed by the Borrower. Notwithstanding any contrary provision herein, this Section shall not be construed to permit the Borrower to (i) elect an Interest Period for Eurodollar Loans that does not comply with Section 2.02(d) or (ii) convert any Borrowing to a Borrowing of a Type not available under the Class of Commitments pursuant to which such Borrowing was made.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which Interest Period shall be a period contemplated by the definition of the term “Interest Period”.

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

(e) If the Borrower fails to deliver an Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period, such Borrowing shall remain a Eurodollar Borrowing with the same Interest Period applicable to the respective Eurodollar Borrowing for

the Interest Period then ended. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. Termination of Commitments. Unless previously terminated or fully funded, the Term Loan Commitments shall terminate at 3:00 p.m. (New York City time) on the Effective Date.

SECTION 2.10. Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan in Dollars on the Maturity Date. There shall be no scheduled principal payments prior to the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in the Register established and maintained in accordance with the provisions of Section 9.04(b)(iv) in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the Obligations.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form reasonably acceptable to the Administrative Agent and the Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

SECTION 2.11. Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty, subject to prior notice in accordance with the provisions of this Section 2.11(a). The Borrower shall notify the Administrative Agent by written notice (promptly followed by telephonic confirmation of such request) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing,

not later than 1:00 p.m., New York City time, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a notice conditioned on the occurrence of a refinancing of the Loans (in whole or in part), then such notice of prepayment may be revoked or delayed by the Borrower (acting in its sole discretion) by notice to the Administrative Agent on or prior to the specified effective date. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing as directed by Borrower. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments, if any, pursuant to Section 2.16.

(b) On the date on which any Loan Party incurs any Indebtedness consisting of a revolving line of credit or similar facility, the Borrower shall notify the Administrative Agent thereof and shall prepay, without premium or penalty, the Loans on such date in an amount equal to the net cash proceeds resulting from the incurrence of such Indebtedness (calculating the net cash proceeds by taking into account, for the avoidance of doubt, any expenses and liabilities, including Taxes, attributable to the incurrence of such Indebtedness and the obligation to repay the Loans pursuant to this Section); provided that the aggregate commitment for any revolving line of credit or similar facility shall be used to determine any prepayment hereunder related thereto.

SECTION 2.12. Fees. (a) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(b) All fees payable hereunder or in connection therewith shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution to the applicable parties. Fees paid shall not be refundable under any circumstances.

SECTION 2.13. Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, (i) during the occurrence and continuance of any Event of Default described in paragraph (a), (h), (i), or (j) of Article VII, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (x) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (y) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section and (ii) during the occurrence and continuance of any other Event of Default, the Administrative Agent, at the direction of the Required Lenders, may, at its option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of "each Lender directly affected thereby" for reductions in interest rates), declare that (x) all Loans shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (y) in the case of any other amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Maturity Date; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy or other electronic communication as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and any such Eurodollar Borrowing shall be repaid on the last day of the then current Interest Period applicable thereto and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.15. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);

(ii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan or of maintaining its obligation to make any such Loan or to increase the cost to such Lender or such other Recipient or to reduce the amount of any sum received or receivable by such Lender or such other Recipient hereunder, whether of principal, interest or otherwise, then the Borrower will pay to such Lender or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked or extended under Section 2.11 and is revoked or extended in accordance therewith but not including any such failure that results from a notice under Section 2.14) or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the

Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17. Taxes. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall indemnify each Recipient, within 10 days after receipt of a written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the amount and type of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to

such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document,

IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) [Intentionally Omitted].

(j) Defined Terms. For purposes of this Section 2.17, the term "applicable law" includes FATCA.

SECTION 2.18. Payments Generally; Allocations of Proceeds; Pro Rata Treatment; Sharing of Set-offs.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, or fees, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 1:00 p.m., New York City time on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 10 South Dearborn Street, Chicago, Illinois 60603, except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be

due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) Any proceeds of Collateral received by the Administrative Agent (i) not constituting a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, such funds shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent from the Borrower, second, to pay any fees or expense reimbursements then due to the Lenders from the Borrower, third, to pay interest then due and payable on the Loans ratably, fourth, to prepay principal on the Loans and any other amounts owing with respect to Banking Services Obligations and Swap Obligations ratably, fifth, [Intentionally Omitted], and sixth, to the payment of any other Secured Obligation (other than any Unliquidated Obligations) due to the Administrative Agent or any Lender by the Borrower. Notwithstanding the foregoing, amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower, or unless an Event of Default is in existence, none of the Administrative Agent or any Lender shall apply any payment which it receives to any Eurodollar Loan of a Class, except (a) on the expiration date of the Interest Period applicable to any such Eurodollar Loan or (b) in the event, and only to the extent, that there are no outstanding ABR Loans of the same Class and, in any event, the Borrower shall pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) Intentionally Omitted.

(d) If, except as expressly provided herein, any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the amount due. In such event, if the Borrower has not in fact made

such payment, then each of the Lenders, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(e) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender and for the benefit of the Administrative Agent, to satisfy such Lender's obligations to it under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account over which the Administrative Agent shall have exclusive control as cash collateral for, and application to, any future funding obligations of such Lender under any such Section; in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

SECTION 2.19. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then, at the request of the Borrower, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, or otherwise mitigate such circumstances, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.15, (ii) the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 or (iii) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Sections 2.15 or 2.17) and obligations under the Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent (which consent shall not unreasonably be withheld, delayed or conditioned) of the Administrative Agent, in each case to the extent that such consent would be required for such assignment pursuant to Section 9.04, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Notwithstanding anything to the contrary in this Agreement, in no event shall break funding payments, if any, pursuant to Section 2.16 be due and payable to any such assignor.

SECTION 2.20. Intentionally Omitted.

SECTION 2.21. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) [Intentionally Omitted];

(b) the Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02); provided, that, except as otherwise provided in Section 9.02, this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby;

In the event that the Administrative Agent and the Borrower each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

## ARTICLE III

## Representations and Warranties

The Borrower represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers; Subsidiaries. (a) Each of the Borrower and its Subsidiaries (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to carry on its business as now conducted and (iii) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. (b) Schedule 3.01 hereto identifies, as of the Effective Date, each Subsidiary, noting whether such Subsidiary is a Material Domestic Subsidiary, the jurisdiction of its incorporation or organization, as the case may be, the percentage of issued and outstanding shares of each class of its capital stock or other equity interests owned by the Borrower and the other Subsidiaries and, if such percentage is not 100% (excluding directors' qualifying shares as required by law), a description of each class issued and outstanding. (c) All of the outstanding shares of capital stock and other equity interests of each Subsidiary are validly issued and outstanding and fully paid and nonassessable and, as of the Effective Date, all such shares and other equity interests indicated on Schedule 3.01 as owned by the Borrower or another Subsidiary are owned, beneficially and of record, by the Borrower or any Subsidiary free and clear of all Liens, other than Liens permitted pursuant to this Agreement. (d) As of the Effective Date, except as indicated on Schedule 3.01, there are no outstanding commitments or other obligations of the Borrower or any Subsidiary to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of the Borrower or any Subsidiary.

SECTION 3.02. Authorization; Enforceability. The execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, and, in the case of the Borrower, the borrowing of Loans and the use of proceeds thereof, in each case, are within each Loan Party's organizational powers and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders of such Loan Party. The Loan Documents to which each Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, and, in the case of the Borrower, the borrowing of Loans and the use of proceeds thereof, in each case, (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate the charter, by-laws or other organizational documents of the Borrower or any of its Subsidiaries, (c) will not violate in any material respect (i) any applicable law or regulation binding on the Borrower or any of its Subsidiaries or their respective properties or (ii) any order of any Governmental Authority, (d) will not violate or result in a default under any BRAC Analysis Testing Agreement to the extent any such failure or default would give rise to a Material Adverse Effect, and (e) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries, other than Liens created under the Loan Documents.

SECTION 3.04. Financial Condition. The Borrower Audited Financial Statements and the Borrower Unaudited Financial Statements and, to the knowledge of the Borrower, the Assurex Audited Financial Statements and the Assurex Unaudited Financial Statements, in each case present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries or Assurex and its consolidated Subsidiaries, as the case may be, for the periods covered thereby in accordance with GAAP, subject to year-end adjustments and the absence of footnotes in the case of the Borrower Unaudited Financial Statements and the Assurex Unaudited Financial Statements.

SECTION 3.05. Properties. (a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for (i) Permitted Encumbrances and (ii) minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each of the Borrower and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and, to the knowledge of the Borrower and its Subsidiaries, the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06. Litigation, Environmental and Labor Matters. (a) There are no actions, suits, proceedings or investigations by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement or any other Loan Documents and (x) would materially and adversely affect the transactions set forth in the Loan Documents or otherwise contemplated hereby or (y) contests in any manner the validity or enforceability of any material provision of any Loan Document.

(b) Except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any reasonable basis for any Environmental Liability.

(c) Except as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect (a) there are no strikes, lockouts or slowdowns against the Borrower or any of its Subsidiaries pending or, to their knowledge, threatened and (b) the hours worked by and payments made to employees of the Borrower and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law relating to such matters. The consummation of the Assurex Acquisition will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement under which the Borrower or any of its Subsidiaries is bound, to the extent the occurrence of such right would reasonably be expected to result in a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements. Each of the Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all BRAC Analysis Testing Agreements, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08. Investment Company Status. Neither the Borrower nor any of its Subsidiaries is an “investment company” as defined in, or required to register under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11. Disclosure. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, at the time of and in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time prepared.

SECTION 3.12. Federal Reserve Regulations. No part of the proceeds of any Loan have been used or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

SECTION 3.13. Liens. There are no Liens on any of the real or personal properties of the Borrower or any Subsidiary except for Liens permitted by Section 6.02.

SECTION 3.14. No Default. No Default or Event of Default has occurred and is continuing.

SECTION 3.15. No Burdensome Restrictions. Neither the Borrower nor any Subsidiary is subject to any Burdensome Restrictions except Burdensome Restrictions permitted under Section 6.08.

SECTION 3.16. Solvency. Immediately after the consummation of the Transactions to occur on the Effective Date, the Borrower and its Subsidiaries, on a consolidated basis, are and will be Solvent.

SECTION 3.17. Insurance. The Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 3.18. [Intentionally Omitted].

SECTION 3.19. Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or to the knowledge of the Borrower or such Subsidiary any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, use of proceeds or other Transactions will violate any Anti-Corruption Law or applicable Sanctions.

SECTION 3.20. Use of Proceeds. The proceeds of the Loans have been used and will be used solely for the purposes provided in Section 5.08.

SECTION 3.21. EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

## ARTICLE IV

## Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Loan Documents. The Administrative Agent (or its counsel) shall have received from each party hereto and thereto either (i) a counterpart of this Agreement, any promissory note issued pursuant to this Agreement (to the extent required hereby) and the Subsidiary Guaranty or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of signed signature pages) that such party has signed a counterpart of the Loan Documents listed in clause (i) above to which it is a party.

(b) Organization Documents, Resolutions, Etc. The Administrative Agent shall have received (x) a good standing certificate (or analogous documentation if applicable) for each Loan Party from the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization, to the extent generally available in such jurisdiction and (y) a certificate of the Secretary or an Assistant Secretary of each Loan Party certifying the following:

(i) that there have been no changes in the Certificate of Incorporation or other charter document of such Loan Party, as attached thereto and as certified as of a recent date by the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization, since the date of the certification thereof by such governmental entity;

(ii) the By-Laws or other applicable organizational document, as attached thereto, of such Loan Party is in effect on the date of such certification;

(iii) the resolutions of the Board of Directors or other governing body of such Loan Party authorizing the execution, delivery and performance of each Loan Document to which it is a party; and

(iv) the names and true signatures of the incumbent officers of each Loan Party authorized to sign the Loan Documents to which it is a party, and (in the case of the Borrower) authorized to request a Borrowing hereunder.

(c) Opinions of Counsel. The Administrative Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, LLP, counsel for the Loan Parties, covering such matters relating to the Loan Parties and the Loan Documents as the Administrative Agent shall reasonably request. The Borrower hereby requests such counsel to deliver such opinions.

(d) Closing Certificate. The Administrative Agent shall have received a certificate signed by the President, a Vice President or a Financial Officer of the Borrower certifying that (i) the Specified Representations are true and correct in all material respects (or in all respects if the applicable representation and warranty is qualified by materiality or Material Adverse Effect), (ii) since August 3, 2016, no Assurex Material Adverse Effect shall have occurred, and (iii) the Assurex Acquisition has been consummated, or substantially simultaneously with the initial Borrowings hereunder, shall be consummated, in all material respects in accordance with the terms of the Assurex Merger Agreement.

(e) Solvency Certificate. The Administrative Agent shall have received a certificate of the chief financial officer of the Borrower substantially in the form of Exhibit B.

(f) [Intentional Omitted].

(g) Assurex Acquisition. The Assurex Acquisition shall have been consummated, or substantially simultaneously with the initial Borrowings hereunder, shall be consummated, in all material respects in accordance with the terms of the Assurex Merger Agreement, without giving effect to any modifications, amendments, consents or waivers by the Borrower that are materially adverse to the interests of the Lenders or the Lead Arranger, unless consented to in writing by the Lead Arranger (such consent not to be unreasonably withheld, delayed or conditioned).

(h) Borrowing Request. The Administrative Agent shall have received a Borrowing Request in accordance with Section 2.03.

(i) Existing Indebtedness. The Administrative Agent shall have received evidence reasonably satisfactory to it that (i) after giving effect to the Assurex Acquisition, the Borrower and its Subsidiaries shall have outstanding no third party Indebtedness for borrowed money, other than the credit facility evidenced by this Agreement and other Indebtedness permitted hereunder and (ii) all Indebtedness to be repaid on the Effective Date has been, or substantially concurrently with the Effective Date will be, repaid, and all Liens (other than Liens permitted to remain outstanding under this Agreement) have been, or substantially concurrently with the Effective Date will be, discharged.

(j) Financial Matters. The Administrative Agent and the Lenders shall have received:

(i) audited financial statements of the Borrower for the three most recent fiscal years of the Borrower ended December 31, 2015 (the "Borrower Audited Financial Statements");

(ii) audited financial statements of Assurex for the two most recent fiscal years of Assurex ended December 31, 2015 (the "Assurex Audited Financial Statements");

(iii) unaudited interim consolidated financial statements of the Borrower and of Assurex for each quarterly period ended after the latest fiscal year referred to in clause (i) or clause (ii) above, as applicable, and ended at least 60 days prior to the Effective Date (such unaudited financial statement of the Borrower being referred to as the "Borrower Unaudited Financial Statements" and such unaudited financial statement of Assurex being referred to as the "Assurex Unaudited Financial Statements"); and

(iv) a pro forma consolidated balance sheet of the Borrower and its Subsidiaries as of the date of the most recent consolidated balance sheet delivered pursuant to clause (i) or (ii) above and a pro forma statement of operations for the most recent 12-month period ending on the last day of such period, in each case adjusted to give effect to the consummation of the Transactions and the financings contemplated hereby as if such transactions, with respect to the pro forma balance sheet, had occurred on such date or with respect to the pro forma statements of operations, had occurred on the first day of the most recently completed fiscal year, and, as of the Effective Date, consistent in all material respects with the forecasts previously provided to the Administrative Agent and the Lead Arranger.

(k) PATRIOT Act. The Administrative Agent and the Lead Arranger shall have received all documentation and other information about the Borrower, the Subsidiary Guarantors and their Subsidiaries that shall have been reasonably requested by the Administrative Agent or any Lead Arranger in writing at least 10 days prior to the Effective Date and that the Administrative Agent and the Lead Arranger determine is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the Patriot Act.

(l) Fees; Expenses. The Administrative Agent shall have received all fees due and payable to the Administrative Agent, the Lead Arranger and the Lenders on or prior to the Effective Date pursuant to the terms of the Fee Letter, and all reasonable and documented out-of-pocket expenses to be paid or reimbursed to the Administrative Agent and the Lead Arranger in accordance with the terms of this Agreement that have been invoiced at least one Business Day prior to the Effective Date shall have been paid, which amounts may be paid, in each case, from the proceeds of the initial Borrowings hereunder.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date (and shall distribute a fully executed copy of the Credit Agreement to the Lenders and an executed promissory note to each Lender requesting a promissory note pursuant to Section 2.10(e)), and such notice shall be conclusive and binding.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects (or in all respects if the applicable representation and warranty is qualified by materiality or Material Adverse Effect) on and as of the date of such Borrowing, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (or in all respects if the applicable representation and warranty is qualified by materiality or Material Adverse Effect) as of such earlier date.

(b) At the time of and immediately after giving effect to such Borrowing, no Default or Event of Default shall have occurred and be continuing.

Each Borrowing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

Notwithstanding the foregoing, (i) the Borrower shall not certify as to the existence of a Default or Event of Default as of the Effective Date, and the Borrower shall only make the Specified Representations as of the Effective Date, in each case for purposes of closing the financing evidenced hereby, funding the Term Loans, and consummating the Assurex Acquisition, and (ii) the Borrower shall be deemed to remake all of the representations and warranties set forth in Article III and shall be deemed to certify that no Default or Event of Default exists (giving effect to the Assurex Acquisition) immediately after funding the Term Loans and consummation of the Assurex Acquisition on the Effective Date.

## ARTICLE V

## Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within one hundred twenty (120) days after the end of each fiscal year of the Borrower (or, if earlier, by the date that the Annual Report on Form 10-K of the Borrower for such fiscal year would be required to be filed under the rules and regulations of the SEC, giving effect to any automatic extension available thereunder for the filing of such form), its audited consolidated balance sheet and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or other independent public accountants of recognized national standing (without a “going concern” or like qualification or exception (except to the extent resulting solely from an upcoming maturity) and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or, if earlier, by the date that the Quarterly Report on Form 10-Q of the Borrower for such fiscal quarter would be required to be filed under the rules and regulations of the SEC,

giving effect to any automatic extension available thereunder for the filing of such form), its consolidated balance sheet and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements (i) for the first three fiscal quarters of any fiscal year under clause (b) above and (ii) under clause (a) above, a certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.11; and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(d) not more than ninety (90) days after the end of each fiscal year of the Borrower, a copy of the plan and forecast (including a projected consolidated and consolidating balance sheet, income statement and funds flow statement) of the Borrower for each quarter of the upcoming fiscal year in form reasonably satisfactory to the Administrative Agent;

(e) promptly after the same become publicly available, copies of all periodic reports and proxy statements filed by the Borrower or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC or such Governmental Authority successor thereto, as applicable, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be; and

(f) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request; provided that none of the Loan Parties will be required to disclose any document, information or other matter pursuant to this clause (f) (i) to any competitor of any Loan Party, (ii) that constitutes non-financial trade secrets, or (iii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by law.

Documents required to be delivered pursuant to clauses (a), (b) and (e) of this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are filed for public availability on the SEC's Electronic Data Gathering and Retrieval System; provided that the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent (which notice the Administrative Agent shall promptly provide to each Lender) of the filing of any such documents and, if requested by the Administrative Agent, promptly provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the compliance certificates required by clause (c) of this Section 5.01 to the Administrative Agent.

SECTION 5.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent (which the Administrative Agent shall promptly distribute to each Lender) prompt written notice of the following:

(a) the Chief Executive Officer or any Financial Officer obtaining knowledge of the occurrence of any Default;

(b) the Chief Executive Officer or any Financial Officer obtaining knowledge of the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof that would reasonably be expected to be adversely determined and, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;

(c) the Chief Executive Officer or any Financial Officer obtaining knowledge of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect; and

(d) the Chief Executive Officer or any Financial Officer obtaining knowledge of the occurrence of any other development that has resulted in, or would reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Existence; Conduct of Business. The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect (a) its legal existence and good standing in its jurisdiction of organization and (b) the rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights material to the conduct of business of the Borrower and its Subsidiaries, and maintain all requisite authority to conduct its business in each other jurisdiction in which its business is conducted, except, in the case of this clause (b), as would not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, would reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05. Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of business of the Borrower and its Subsidiaries, taken as a whole, in good working order and condition, ordinary wear and tear excepted, and (b) maintain with financially sound and reputable carriers insurance in such amounts and against such risks as is customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. The Borrower will furnish to the Administrative Agent (for distribution to the Lenders), upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained.

On the 90th day to occur after the Effective Date, the Borrower shall deliver to the Administrative Agent endorsements (x) to all "All Risk" physical damage insurance policies on all of the tangible personal property and assets insurance policies of the Borrower and the Subsidiary Guarantors naming the Administrative Agent as lender loss payee, and (y) to all general liability and other liability policies of the Borrower and the Subsidiary Guarantors naming the Administrative Agent an additional insured. In the event the Borrower or any of its Subsidiaries at any time or times hereafter shall fail to obtain or maintain any of the policies or insurance required herein or to pay any premium in whole or in part relating thereto, then the Administrative Agent, without waiving or releasing any obligations or resulting Default hereunder, may at any time or times thereafter (but shall be under no obligation to do so) obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto which the Administrative Agent deems advisable. All sums so disbursed by the Administrative Agent shall constitute part of the Obligations, payable as provided in this Agreement. The Borrower will furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding.

SECTION 5.06. Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which entries which are full, true and correct in all material respects are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, including environmental assessment reports and Phase I or Phase II studies, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided that, excluding any such visits and inspections during the occurrence and continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 5.06 and the Administrative Agent shall not exercise such rights more often than one (1) time during any fiscal year of the Borrower. The Administrative Agent and its respective representatives and independent contractors shall use commercially reasonable efforts to avoid interruption of the normal business operations of the Borrower and its Subsidiaries. The Borrower acknowledges that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain reports pertaining to the Borrower and its Subsidiaries' assets for internal use by the Administrative Agent and the Lenders; provided that none of the Loan Parties will be required to disclose any document, information or other matter pursuant to this Section 5.06 (i) to any competitor of any Loan Party, (ii) that constitutes non-financial trade secrets, or (iii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by law.

SECTION 5.07. Compliance with Laws and Material Contractual Obligations. The Borrower will, and will cause each of its Subsidiaries to, (i) comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including without limitation Environmental Laws) and (ii) perform in all material respects its obligations under BRAC Analysis Testing Agreements to which it is a party, except in each case where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.08. Use of Proceeds. The proceeds of the Loans will be used to finance the Assurex Acquisition, to refinance certain Indebtedness of Assurex and its Subsidiaries as contemplated by Section 4.01(i) and to pay fees, commissions, transaction costs and expenses incurred in connection with the Transactions and for working capital and general corporate purposes. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. The Borrower will not request any Borrowing, and the Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09. Subsidiary Guarantors; Pledges; Additional Collateral; Further Assurances.

(a) As promptly as possible but in any event but not later than thirty (30) days following the delivery of the certificate required to be delivered under Section 5.01(c) (or such later date as may be agreed upon by the Administrative Agent) in respect of the fiscal quarter immediately following the date on which any Person becomes a Subsidiary or any Subsidiary qualifies independently as, or is designated by the Borrower or the Administrative Agent as, a Material Domestic Subsidiary pursuant to the definition of "Material Domestic Subsidiary", the Borrower shall provide the Administrative Agent with written notice thereof and shall cause each such Subsidiary which also qualifies as a Material Domestic Subsidiary to deliver to the Administrative Agent a joinder to the Subsidiary Guaranty and the Security Agreement (in each case in the form contemplated thereby) pursuant to which such Subsidiary agrees to be bound by the terms and provisions thereof, such Subsidiary Guaranty and the Security Agreement to be accompanied by appropriate corporate resolutions, other corporate documentation and legal opinions consistent with those delivered on the Effective Date and otherwise in form and substance reasonably satisfactory to the Administrative Agent and its counsel. Notwithstanding anything to the contrary set forth herein, no Subsidiary constituting an Excluded Subsidiary shall be required to be a Guarantor.

(b) The Borrower will cause, and will cause each other Loan Party to cause, all of its Collateral to be subject at all times to perfected Liens in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Secured Obligations in accordance with the terms and conditions of the Collateral Documents, subject in any case to Liens permitted by Section 6.02. Without limiting the generality of the foregoing, the Borrower will cause the Applicable Pledge Percentage of the issued and outstanding Equity Interests of each Pledge Subsidiary directly owned by the Borrower or any other Loan Party to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent to secure the Secured Obligations in accordance with the terms and conditions of the Collateral Documents. Notwithstanding the foregoing, (i) no Loan Party shall be required to provide any mortgage, landlord waiver, collateral access agreement or deed of trust with respect to any real property (including leasehold interests), (ii) no Loan Party shall be required to provide any pledge or security agreement that is governed by any law other than the laws of the State of New York, and (iii) no such pledge agreement in respect of the Equity Interests of a Foreign Subsidiary shall be required hereunder to the extent the Administrative Agent or its counsel determines that such pledge would not provide material credit support for the benefit of the Secured Parties pursuant to legally valid, binding and enforceable pledge agreements.

(c) Without limiting the foregoing, but subject to the limitations in this Section 5.09 and elsewhere in the Loan Documents, the Borrower will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which may be required by law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created by the Collateral Documents (including, for the avoidance of doubt, in connection with the disclosure of any additional assets constituting Collateral pursuant to any updates of the exhibits to the Security Agreement as required thereby), all at the expense of the Borrower.

(d) Notwithstanding anything to the contrary set forth herein, no Loan Party shall be required to grant a security interest to the Administrative Agent in any Collateral until the 90th day to occur after the Effective Date.

SECTION 5.10. Post-Closing Obligations. Within 90 days after the Effective Date (or such later date as the Administrative Agent may agree in its sole discretion), the Borrower will deliver to the Administrative Agent documentation, in form and substance reasonably acceptable to the Administrative Agent, evidencing the release of Lien number UC137340 filed by the Ohio Department of Job and Family Services on April 2, 2016 against Assurex (formerly known as Assurerx Health, Inc.).

## ARTICLE VI

## Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Indebtedness. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and refinancings, extensions, renewals and replacements of any such Indebtedness with Indebtedness of a similar type that does not increase the outstanding principal amount thereof (except to the extent of prepayment premiums, fees, expenses and interest paid in kind owing in connection with such refinancing, extension, renewal or replacement or otherwise added to the principal amount thereof);

(c) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary, in each case, to the extent the related investment, loan or advance is permitted pursuant to Section 6.04(d);

(d) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary; provided that, in the case of any Guarantee made for the benefit of any Subsidiary that is not a Loan Party, such Guarantee must also be permitted pursuant to Section 6.04(d);

(e) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and refinancings, extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (except to the extent of prepayment premiums, fees, expenses and interest paid in kind owing in connection with such refinancing, extension, renewal or replacement or otherwise added to the principal amount thereof); provided that (i) such Indebtedness is incurred prior to or within ninety (90) days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed $15,000,000 at any time outstanding;

(f) Indebtedness of the Borrower or any Subsidiary as an account party in respect of trade letters of credit and letters of credit issued in connection with self-insured workers' compensation liabilities or as otherwise required by applicable law;

(g) (i) Indebtedness the proceeds of which are used to finance or to repay Loans used to fund, (ii) Indebtedness assumed in connection with, and (iii) Indebtedness of any subsidiary acquired in connection with, any Permitted Acquisition;

(h) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(i) Indebtedness consisting of financing of insurance premiums in the ordinary course of business;

(j) Indebtedness of the Borrower or any Subsidiary secured by a Lien on any asset (not constituting Collateral) of the Borrower or any Subsidiary; provided that the aggregate outstanding principal amount of Indebtedness permitted by this clause (j) shall not in the aggregate exceed $50,000,000 at any time;

(k) deferred compensation incurred in the ordinary course of business;

(l) unsecured Indebtedness constituting obligations in respect of working capital adjustment requirements, deferred purchase price adjustments, "earn outs", indemnities or similar obligations in connection with any Permitted Acquisition;

(m) taxes deferred in compliance with applicable law;

(n) Indebtedness with respect to judgments or awards not constituting an Event of Default;

(o) unsecured Indebtedness issued to officers, directors and employees which is used to purchase equity interests of the Borrower, to the extent such purchase of equity interests is permitted under this Agreement and in an aggregate outstanding principal amount for all such Indebtedness not to exceed $5,000,000 at any time;

(p) unsecured Indebtedness owing to banks or other financial institutions under credit cards to officers and employees for, and constituting, business related expenses incurred in the ordinary course of business;

(q) Indebtedness with respect to surety, appeal or similar bonds or instruments, in each case provided in the ordinary course of business; and

(r) other Indebtedness in an aggregate principal amount not exceeding the greater of (x) $25,000,000 and (y) 10% of Consolidated Total Assets (including after giving pro forma effect to any acquisitions or investments made in connection therewith) as of the end of the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, the last fiscal quarter included in the financial statements of the Borrower and its Subsidiaries referred to in Section 3.04), as applicable.

SECTION 6.02. Liens. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and refinancings, extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof (except to the extent of prepayment premiums, fees, expenses and interest paid in kind owing in connection with such refinancing, extension, renewal or replacement or otherwise added to the principal amount thereof);

(d) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and refinancings, extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof (except to the extent of prepayment premiums, fees, expenses and interest paid in kind owing in connection with such refinancing, extension, renewal or replacement or otherwise added to the principal amount thereof);

(e) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary; provided that, subject to the foregoing restrictions, individual financings of assets subject to such Liens provided by one lender or lessor may be cross-collateralized to the other financings provided by such lender or lessor;

(f) Liens on any property or asset acquired pursuant to a Permitted Acquisition provided that (i) such Liens secure Indebtedness permitted by clause (g) of Section 6.01, (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) after such Permitted Acquisition, (iii) the Indebtedness secured thereby does not exceed the consideration paid for such Permitted Acquisition and (iv) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary;

(g) Liens on assets (not constituting Collateral) of the Borrower and its Subsidiaries not otherwise permitted above so long as the aggregate principal amount of the Indebtedness and other obligations subject to such Liens does not at any time exceed $50,000,000;

(h) any interest or title of a lessor, licensor, sublessor or sublicensor under any lease or license not prohibited by this Agreement and entered into in the ordinary course of business;

(i) Liens arising from precautionary Uniform Commercial Code financing statements (or equivalent filings or registrations in foreign jurisdictions) filed under any lease permitted by this Agreement and entered into in the ordinary course of business;

(j) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business;

(k) Liens on insurance policies securing Indebtedness incurred by the Borrower or any Subsidiary not prohibited by this Agreement to secure the payment of insurance premiums; and

(l) additional Liens on property of the Borrower or any of its Subsidiaries securing any Indebtedness or other liabilities; provided that, the aggregate outstanding principal amount of all such Indebtedness and liabilities secured by property of the Loan Party shall not exceed the greater of (x) $5,000,000 and (y) 2.5% of the Consolidated Total Assets (including after giving pro forma effect to any acquisitions or investments made in connection therewith) as of the end of the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, the last fiscal quarter included in the financial statements of the Borrower and its Subsidiaries referred to in Section 3.04), as applicable.

SECTION 6.03. Fundamental Changes and Asset Sales. (a) The Borrower will not, and will not permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) any of its assets (including pursuant to a Sale and Leaseback Transaction), or any of the Equity Interests of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that:

(i) the Borrower and its wholly-owned Subsidiaries may consummate the Assurex Acquisition;

(ii) any Subsidiary may merge into or consolidate with the Borrower or any Subsidiary; provided that (A) if the Borrower is a party in such transaction, the Borrower is the surviving corporation; and (B) if any Subsidiary Guarantor is a party in such transaction and the Borrower is not, the surviving entity shall be or become a Subsidiary Guarantor;

(iii) any Subsidiary that is not a Loan Party may sell, transfer, lease or otherwise dispose of its assets (A) to the Borrower or any other Subsidiary or (B) in any transaction permitted pursuant to Section 6.04;

(iv) any Subsidiary Guarantor may sell, transfer, lease or otherwise dispose of its assets (A) to a Loan Party or (B) in any transaction permitted pursuant to Section 6.04;

(v) Borrower or any Subsidiary may merge into or consolidate with another Person in order to consummate a transaction what is otherwise permitted pursuant to Section 6.04; provided that (A) if the Borrower is a party in such transaction, the Borrower is the surviving corporation; and (B) if any Subsidiary Guarantor is a party in such transaction and the Borrower is not, the surviving entity shall be or become a Subsidiary Guarantor;

(vi) the Borrower and its Subsidiaries may (A) sell inventory in the ordinary course of business, (B) effect sales, trade-ins or dispositions of used equipment for value in the ordinary course of business, (C) enter into licenses or sublicenses of technology or other intellectual property in the ordinary course of business, (D) enter into leases in the ordinary course of business, and (E) make any other sales, transfers, leases or dispositions (and any merger or consolidation with another Person in order to consummate such sale, transfer, lease or disposition) that, together with all other property of the Borrower and its Subsidiaries previously leased, sold or disposed of as permitted by this clause (E) during any fiscal year of the Borrower, does not exceed the greater of (x) $35,000,000 and (y) an amount equal to 15% of Consolidated Total Assets as of the end of the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, the last fiscal quarter included in the financial statements of the Borrower and its Subsidiaries referred to in Section 3.04), as applicable;

(vii) the use or transfer of cash or cash equivalents in a manner that is not prohibited by the terms of the Agreement;

(viii) sales, transfers or dispositions of accounts in the ordinary course of business for purposes of collection or settlement of disputed claims;

(ix) sales, transfers or dispositions of assets resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of; and

(x) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; provided that, if any such dissolved or liquidated Subsidiary is a Loan Party, such Subsidiary shall sell, transfer or otherwise dispose of its assets to another Loan Party prior to or concurrently with such dissolution or liquidation;

provided that any such merger or consolidation involving a Person that is not a wholly-owned Subsidiary immediately prior to such merger or consolidation shall not be permitted unless it is also permitted by Section 6.04.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto, reasonable extensions thereof or ancillary or complimentary thereto.

(c) The Borrower will not, nor will it permit any of its Subsidiaries to, change its fiscal year from the basis in effect on the Effective Date, in each case other than to match the fiscal year of any Subsidiary to the fiscal year of the Borrower.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger or consolidation with any Person that was not a wholly owned Subsidiary prior to such merger or consolidation) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any Person or any assets of any other Person constituting a business unit, except:

(a) cash and Permitted Investments;

(b) Permitted Acquisitions;

(c) investments, loans and advances by the Borrower and its Subsidiaries existing on the date hereof in or to other Persons (including investments, loans and advances by Borrower in or to its Subsidiaries), in each case as set forth on Schedule 6.04;

(d) investments, loans or advances made by the Borrower in or to any Subsidiary and made by any Subsidiary in or to the Borrower or any other Subsidiary and Guarantees by the Borrower or any Subsidiary for the benefit of the Borrower or any other Subsidiary; provided that at the time of any such investment, loan, advance by any Loan Party in, or Guarantee by any Loan Party for the benefit of, any Subsidiary that is not a Loan Party the aggregate amount outstanding of all such investments, loans, advances, and Guarantees shall not exceed the greater of (x) $25,000,000 and (y) an amount equal to 10% of Consolidated Total Assets as of the end of the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, the last fiscal quarter included in the financial statements of the Borrower and its Subsidiaries referred to in Section 3.04), as applicable;

(e) the Assurex Acquisition;

(f) Guarantees constituting Indebtedness permitted by Section 6.01;

(g) cash and marketable securities held in Deposit Accounts (as defined in the Security Agreement) or Securities Accounts (as defined in the Security Agreement), which are subject to control agreements to the extent required by the Security Agreement;

(h) investments in negotiable instruments for collection in the ordinary course of business;

(i) advances made in connection with purchases of goods or services in the ordinary course of business;

(j) investments received in settlement of delinquent obligations to the Borrower or any Subsidiary effected in the ordinary course of business or owing to the Borrower or any Subsidiary as a result of any bankruptcy or insolvency proceeding involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of the Borrower or any Subsidiary;

(k) investments, loans, advances and Guarantees existing on the Effective Date and set forth on Schedule 6.04;

(l) investments arising under Swap Agreements entered into in compliance with Section 6.05;

(m) loans or advances made by the Borrower or any Subsidiary to its employees in the ordinary course of business consistent for travel and entertainment expenses, relocation costs and similar purposes up to a maximum of $4,000,000 in the aggregate at any one time outstanding;

(n) investments, loans and advances owned by, and Guarantees made by, any Person existing at the time such Person becomes a Subsidiary of the Borrower or consolidates or merges with the Borrower or any of its Subsidiaries (including in connection with a Permitted Acquisition) so long as such investments, loans, advances and Guarantee were not made in contemplation of such Person becoming a Subsidiary or of such consolidation or merger;

(o) (i) endorsements for collection or deposit in the ordinary course of business and consistent with past practice and (ii) extensions of trade credit in the ordinary course of business;

(p) investments by any Loan Party or any Subsidiary of a Loan Party in any Subsidiary of such Person in such amount which is required by law to maintain a minimum net capital requirement or as may otherwise be required by applicable law or regulation;

(q) extensions of credit consisting of accounts receivable or notes receivable arising from the sale or lease of goods in the ordinary course of business of the Borrower or any Subsidiary;

(r) investments held and loans and advances made by a Person acquired in a Permitted Acquisition or an acquisition that is otherwise permitted hereunder to the extent that none of such investments, loans or advances were made in connection with or contemplation of such acquisition and were in existence as of the date of consummation of such acquisition;

(s) investments by the Borrower or any of its Subsidiaries for which the consideration consists solely of Equity Interests of the Borrower;

(t) any endorsement of a check or other medium of payment for deposit or collection, or any similar transaction, in each case in the ordinary course of business; and

(u) any other investment, loan, advance or Guarantee (other than acquisitions) so long as during the term of this Agreement, at the time of making any such Investment, loan, advance or Guarantee, the aggregate amount of all such investments, loans, advances and Guarantees which are

outstanding do not exceed an amount equal to the greater of (x) $25,000,000 and (y) 10% of Consolidated Total Assets as of the end of the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, the last fiscal quarter included in the financial statements of the Borrower and its Subsidiaries referred to in Section 3.04), as applicable.

SECTION 6.05. Swap Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of the Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

SECTION 6.06. Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions not otherwise prohibited hereunder and at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly owned Subsidiaries not involving any other Affiliate, (c) any transactions otherwise permitted hereby, (d) the issuance of Equity Interests of the Borrower to any employee, director, officer, manager, distributor or consultant (or their respective controlled Affiliates) of the Borrower or any of its Subsidiaries, and (e) compensation, salaries and employment agreements and arrangements (and expense reimbursement and indemnification arrangements for) to officers and directors of the Borrower and its Subsidiaries.

SECTION 6.07. Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) the Borrower or any Subsidiary may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its common stock;

(b) Subsidiaries may make Restricted Payments ratably with respect to their Equity Interests so long as such Restricted Payment is not prohibited by Sections 6.03 and 6.04 hereof;

(c) the Borrower may make Restricted Payments pursuant to and in accordance with stock option or equity-based plans or other benefit plans for directors, officers, employees or consultants of the Borrower and its Subsidiaries; and

(d) the Borrower and its Subsidiaries may make any other Restricted Payment so long as at the time of the making of such Restricted Payment, the Restricted Payment Requirements are satisfied in connection with such Restricted Payment.

SECTION 6.08. Restrictive Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the Secured Obligations, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to holders of its Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee the Secured Obligations; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law, regulation, rule or order of any Governmental Authority or by any Loan Document, (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any other asset pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is, or the assets that are, to be sold and such sale is permitted hereunder or a condition to the closing of such sale is the payment in full of this Agreement or a consent under this Agreement, (iii) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iv) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof, (v) the foregoing shall not apply to restrictions and conditions contained in other Indebtedness permitted under this Agreement so long as such restrictions and conditions are not more onerous for the Borrower and the Subsidiaries than the restrictions and conditions contained in the Loan Documents, (vi) neither clause (a) (solely in the case of any such Person that becomes a Foreign Subsidiary) nor clause (b) of the foregoing shall apply to agreements or obligations to which a Person was subject at the time such Person becomes a Subsidiary so long as such agreements or obligations were not entered into in contemplation of such Person becoming a Subsidiary and (vii) the foregoing shall not apply to customary provisions contained in joint venture or similar agreements and related to the organizational documents of non-wholly owned Subsidiaries; provided that the Borrower or the applicable Subsidiary shall use commercially reasonable efforts to exclude any such limitations or restrictions from such joint venture agreements and organizational documents.

SECTION 6.09. Subordinated Indebtedness and Amendments to Subordinated Indebtedness Documents and Assurex Merger Agreement.

(a) The Borrower will not, and will not permit any Subsidiary to, directly or indirectly voluntarily prepay, defease or in substance defease, purchase, redeem, retire or otherwise acquire, any Subordinated Indebtedness or any Indebtedness from time to time outstanding under the Subordinated Indebtedness Documents, in each case other than in connection with any refinancings, extensions, renewals and replacements thereof that do not decrease the outstanding principal amount thereof or, so long as such subordination agreement has been approved by the Administrative Agent in its reasonable discretion, to the extent not otherwise prohibited by the respective subordination agreement with respect to any such Indebtedness.

(b) Unless not otherwise prohibited by the respective subordination agreement (solely to the extent that such subordination agreement has been approved by the Administrative Agent in its sole discretion) with respect to any such Indebtedness, the Borrower will not, and will not permit any Subsidiary to, amend the Subordinated Indebtedness Documents or any document, agreement or instrument evidencing any Indebtedness incurred pursuant to the Subordinated Indebtedness Documents (or any refinancings, replacements, substitutions, extensions or renewals thereof) or pursuant to which such Indebtedness is issued where such amendment, modification or supplement provides for the following or which has any of the following effects:

(i) increases the overall principal amount of any such Indebtedness (other than as permitted pursuant to Section 6.01) or increases the amount of any single scheduled installment of principal or interest that is required to be made prior to the Maturity Date;

(ii) shortens or accelerates the date upon which any installment of principal or interest becomes due or adds any additional mandatory redemption provisions, in each case, prior to the Maturity Date;

(iii) shortens the final maturity date of such Indebtedness or otherwise accelerates the amortization schedule with respect to such Indebtedness, in each case prior to the Maturity Date;

(iv) increases the rate of interest accruing on such Indebtedness;

(v) provides for the payment of additional fees or increases existing fees;

(vi) amends or modifies any financial or negative covenant (or covenant which prohibits or restricts the Borrower or any Subsidiary from taking certain actions) in a manner which is more onerous or more restrictive in any material respect to the Borrower or such Subsidiary or which is otherwise materially adverse to the Borrower, any Subsidiary and/or the Lenders or, in the case of any such covenant, which places material additional restrictions on the Borrower or such Subsidiary or which requires the Borrower or such Subsidiary to comply with more restrictive financial ratios or which requires the Borrower to better its financial performance, in each case from that set forth in the existing applicable covenants in the Subordinated Indebtedness Documents or the applicable covenants in this Agreement, unless, in each case, such amendment or modification is intended to match an amendment or modification to the Loan Documents and maintain the same cushion as is in the existing Subordinated Indebtedness Documents and the Loan Documents; or

(vii) amends, modifies or adds any affirmative covenant in a manner which (i) when taken as a whole, is materially adverse to the Borrower, any Subsidiary and/or the Lenders or (ii) is more onerous than the existing applicable covenant in the Subordinated Indebtedness Documents or the applicable covenant in this Agreement, unless, in each case, such amendment, modification or addition is intended to match an amendment, modification or addition to the Loan Documents and maintain the same cushion as is in the existing Subordinated Indebtedness Documents and the Loan Documents.

(c) The Borrower will not, and will not permit any Subsidiary to, agree to, enter into or otherwise permit any amendment, modification, consent or waiver in respect of the Assurex Merger Agreement that is materially adverse to the interests of the Secured Parties or the Lead Arranger, unless consented to in writing by the Lead Arranger (such consent not to be unreasonably withheld, delayed or conditioned).

SECTION 6.10. Sale and Leaseback Transactions. The Borrower will not, nor will it permit any Subsidiary to, enter into any Sale and Leaseback Transaction, other than Sale and Leaseback Transactions in respect of which the net cash proceeds received in connection therewith does not exceed $25,000,000 in the aggregate during the term of this Agreement, determined on a consolidated basis for the Borrower and its Subsidiaries.

SECTION 6.11. Financial Covenants.

(a) Maximum Leverage Ratio. Beginning with the fiscal quarter ending December 31, 2016, the Borrower will not permit the Leverage Ratio, determined as of the end of each of its fiscal quarters for the period of four (4) consecutive fiscal quarters ending with the end of such fiscal quarter, all calculated for the Borrower and its Subsidiaries on a consolidated basis to be greater than 3.00 to 1.00.

(b) Minimum Interest Coverage Ratio. Beginning with the fiscal quarter ending December 31, 2016, the Borrower will not permit the Interest Coverage Ratio, determined as of the end of each of its fiscal quarters in each case for the period of four (4) consecutive fiscal quarters ending with the end of such fiscal quarter, all calculated for the Borrower and its Subsidiaries on a consolidated basis to be less than 3.50 to 1.00.

## ARTICLE VII

## Events of Default

If any of the following events ("Events of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 4.01(g), 5.02, 5.03 (with respect to the Borrower's existence), 5.08 or 5.09, in Article VI;

(e) the Borrower or any Subsidiary Guarantor, as applicable, shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of the Required Lenders);

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (in each case, after giving effect to any applicable grace or cure periods);

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness (in each case, after giving effect to any applicable grace or cure periods); provided that, in each case, such event or condition remains unremedied or has not been waived by the holders of such Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Material Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of $40,000,000 shall be rendered against the Borrower, any Subsidiary or any combination thereof or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment and in each case, the judgment or attachment shall remain undischarged, not dismissed and unsatisfied for a period of thirty (30) consecutive days during which execution shall not be effectively stayed; provided, that any such amount shall be calculated after deducting from the sum so payable any amount of such judgment that is covered by a valid and binding policy of insurance in favor of the Borrower or such Subsidiary (but only if the applicable insurer shall have been advised of such judgment and of the intent of the Borrower or such Subsidiary to make a claim in respect of any amount payable by it in connection therewith and such insurer shall not have disputed coverage);

(l) an ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect;

(m) a Change in Control shall occur;

(n) the occurrence of any default or event of default under the Security Agreement or the failure of any Subsidiary Guarantor to make any payment required under the Subsidiary Guaranty;

(o) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or the Borrower or any Subsidiary shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms) other than any cessation in validity or enforceability that occurs in accordance with its terms; or

(p) any Collateral Document (if applicable) shall for any reason fail to create a valid and perfected security interest having the priority required pursuant to such Collateral Document in all or any material portion of the Collateral purported to be covered thereby, except as permitted by the terms of any Loan Document;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Secured Obligations of the Borrower accrued hereunder and under the other Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (iii) in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Secured Obligations accrued hereunder and under the other Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

## ARTICLE VIII

## The Administrative Agent

Each of the Lenders, on behalf of itself and any of its Affiliates that are Secured Parties, hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States of America, each of the Lenders, on behalf of itself and any of its Affiliates that are Secured Parties, hereby grants to the Administrative Agent any required powers of attorney to execute any Collateral Document governed by the laws of such jurisdiction on such Lender's behalf. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" as used herein or in any other Loan Documents (or any similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as determined by a final nonappealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral or (vi) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facility provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a Lender or assign or otherwise transfer its rights, interests and obligations hereunder.

None of the Lenders, if any, identified in this Agreement as a Syndication Agent or Co-Documentation Agent shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to the relevant Lenders in their respective capacities as Syndication Agent or Co-Documentation Agents, as applicable, as it makes with respect to the Administrative Agent in the preceding paragraph.

The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the New York Uniform Commercial Code. Each Lender authorizes the Administrative Agent to enter into each of the Collateral Documents to which

it is a party and to take all action contemplated by such documents. Each Lender agrees that no Secured Party (other than the Administrative Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Administrative Agent for the benefit of the Secured Parties upon the terms of the Collateral Documents. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties. The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral (i) as described in Section 9.02(d); (ii) as permitted by, but only in accordance with, the terms of the applicable Loan Document; or (iii) if approved, authorized or ratified in writing by the Required Lenders, unless such release is required to be approved by all of the Lenders hereunder. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant hereto. Upon any sale or transfer of assets constituting Collateral which is permitted pursuant to the terms of any Loan Document, or consented to in writing by the Required Lenders or all of the Lenders, as applicable, and upon at least five (5) Business Days' prior written request by the Borrower to the Administrative Agent, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Administrative Agent for the benefit of the Secured Parties herein or pursuant hereto upon the Collateral that was sold or transferred; provided that (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent's opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Secured Obligations or any Liens upon (or obligations of the Borrower or any Subsidiary in respect of) all interests retained by the Borrower or any Subsidiary, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

In case of the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim under Sections 2.12, 2.13, 2.15, 2.16, 2.17 and 9.03) allowed in such judicial proceeding; and

(b) collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03).

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at Myriad Genetics, Inc., 320 Wakara Way, Salt Lake City, Utah 84108, attention: R. Bryan Riggsbee (Telecopy: 801-584-3640), (Telephone: 801-584-3540); with a copy, in the case of any notice of an Event of Default, to: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Attention: Joseph W. Price, Chrysler Center, 666 Third Avenue, New York New York 10017, Facsimile No.: 212-983-3115, Email: JWPrice@Mintz.com;

(ii) if to the Administrative Agent, to JPMorgan Chase Bank, N.A., 10 South Dearborn St., Floor L2, Chicago, Illinois 60603, jpm.agency.servicing.1@jpmorgan.com, Attention of Loan and Agency Services (Telecopy No. (888) 292-9533),with a copy to JPMorgan Chase Bank, N.A., 712 Main Street, Floor 8 North, Houston, Texas 77002, attention: Laura S. Woodward; laura.s.woodward@jpmorgan.com (Telecopy 713-216-671), (Telephone: 713-216-4943); and

(iii) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through Electronic Systems, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by using Electronic Systems pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as

available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

(d) Electronic Systems.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Communications through an Electronic System, except for damages, losses and expenses which are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of any Agent Party. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through an Electronic System.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Subject to clauses (c) and (f) below, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby ((x) other than any reduction of any rate of interest accrued pursuant to Section 2.13(d) and (y) except that any amendment or modification of the financial covenants in this Agreement (or defined terms used in the financial covenants in this Agreement) shall not constitute a reduction in the rate of interest or fees for purposes of this clause (ii)), (iii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby (other than any reduction of the amount of, or any extension of the payment date for, the mandatory prepayments required under Section 2.11, in each case which shall only require the approval of the Required Lenders), (iv) change Section 2.18(b) or (d) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vi) (x) release the Borrower from its obligations under Article X or (y) release all or substantially all of the Subsidiary Guarantors from their obligations under the Subsidiary Guaranty, in each case, without the written consent of each Lender, or (vii) except as provided in clause (d) of this Section or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent (it being understood that any change to Section 2.21 shall require the consent of the Administrative Agent). Notwithstanding the foregoing, no consent with respect to any amendment, waiver or other modification of this Agreement shall be required of any Defaulting Lender, except with respect to any amendment, waiver or other modification referred to in clause (i), (ii) or (iii) of the first proviso of this paragraph and then only in the event such Defaulting Lender shall be directly affected by such amendment, waiver or other modification.

(c) Intentionally Omitted.

(d) The Lenders hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release, and the Administrative Agent hereby agrees to release, any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the termination of all the Commitments, payment and satisfaction in full in cash of all Secured Obligations (other than Unliquidated Obligations), and the cash collateralization of all Unliquidated Obligations under clause (a) of the definition thereof in a manner satisfactory to the Administrative Agent, (ii) constituting property being sold or disposed of if the Borrower certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property leased to the Borrower or any Subsidiary under a lease which has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Any such release shall not in any manner discharge, affect, or impair the Obligations or any

Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. In addition, each of the Lenders, on behalf of itself and any of its Affiliates that are Secured Parties, irrevocably authorizes the Administrative Agent, at its option and in its discretion, (i) to subordinate any Lien on any assets granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(e) or Section 6.02(f) or (ii) in the event that the Borrower shall have advised the Administrative Agent that, notwithstanding the use by the Borrower of commercially reasonable efforts to obtain the consent of such holder (but without the requirement to pay any sums to obtain such consent) to permit the Administrative Agent to retain its liens (on a subordinated basis as contemplated by clause (i) above), the holder of such other Indebtedness requires, as a condition to the extension of such credit, that the Liens on such assets granted to or held by the Administrative Agent under any Loan Document be released, to release the Administrative Agent's Liens on such assets.

(e) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender directly affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a "Non-Consenting Lender"), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower and the Administrative Agent shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrower shall pay or cause to be paid to such Non-Consenting Lender in same day funds on the day of such replacement (1) the outstanding principal amount of its Loans and all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

(f) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses actually incurred by the Administrative Agent and its Affiliates; provided that, for the purposes of this clause (i), the Borrower shall only be required to pay the actual reasonable and documented fees, charges and disbursements of one primary external counsel and, if reasonably necessary, one local counsel in each relevant jurisdiction for the Administrative Agent and its Affiliates, in connection with the preparation and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) [Intentionally Omitted] and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender, including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent, or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and any other Loan Document, including its rights under this Section, or in connection with the Loans made issued hereunder,

including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided that, for purposes of this clause (iii), the Borrower shall only be required to pay the fees, disbursements and other charges of one primary external counsel for the Administrative Agent and all Lenders and, if reasonably necessary, a single local counsel for the Administrative Agent and all Lenders in each relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) or, solely in the case of an actual or perceived conflict of interest between the Administrative Agent and the Lenders where the Lenders affected by such conflict inform the Borrower of such conflict, one additional primary external counsel and one additional local counsel in each relevant jurisdiction to each group of similarly situated affected Lenders).

(b) The Borrower shall indemnify the Administrative Agent, and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses; provided that, the Borrower shall only be required to pay the actual reasonable and documented fees, charges and disbursements of one primary external counsel for all Indemnitees (and, if reasonably necessary, a single local counsel for all Indemnitees in each relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) or, solely in the case of an actual or perceived conflict of interest between any of the Indemnitees where the Indemnitees affected by such conflict inform the Borrower of such conflict, one additional primary external counsel and one additional local counsel in each relevant jurisdiction to each group of similarly situated affected Indemnitees), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by the Borrower or any other Loan Party or its or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (x) the bad faith, gross negligence or willful misconduct of such Indemnitee or the bad faith, gross negligence or willful misconduct of such Indemnitee's Controlled Affiliates or any of its or their directors, officers, employees or principals (each a "Related Party"), (y) without limiting clause (z) below, a material breach by such Indemnitee or its Related Parties of its express obligations under this Agreement pursuant to a claim initiated by the Borrower or any other Loan Party or (z) any dispute among Indemnitees or their Related Parties other than claims against the Administrative Agent, any Lead Arranger or any of the Lenders in its capacity as an agent, arranger, bookrunner, or similar capacity. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (it being understood that the Borrower's failure to pay any such amount shall not relieve the Borrower of any default in the payment thereof); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), or (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, or any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable not later than fifteen (15) Business Days after written demand therefor.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:

(A) the Borrower (provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof); provided, further, that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee; and

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $1,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if any Event of Default pursuant to Section 7 subclauses (a), (b), (h) or (i) has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of $3,500, such fee to be paid by either the assigning Lender or the assignee Lender or shared between such Lenders; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Affiliates and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) the Borrower, any of its Subsidiaries or any of its Affiliates, or (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(e) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities other than an Ineligible Institution (a "Participant"), in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to

Section 2.18(d) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent and the Lead Arranger constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, e-mailed ..pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as

delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act, provided that nothing herein shall require the Administrative Agent to accept electronic signatures in any form or format without the prior written consent.

SECTION 9.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Secured Party is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final and in whatever currency denominated) at any time held and other obligations at any time owing by such Secured Party to or for the credit or the account of the Borrower or any Subsidiary Guarantor against any of and all of the Secured Obligations held by such Secured Party, irrespective of whether or not such Secured Party shall have made any demand under the Loan Documents and although such obligations may be unmatured. The rights of each Secured Party under this Section are in addition to other rights and remedies (including other rights of setoff) which such Secured Party may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each of the parties to this Agreement hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in the Borough of Manhattan, and of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees 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 law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and who are subject to customary confidentiality obligations of professional practice or who agree to be bound by the terms of this paragraph (or language substantially similar to this paragraph) (with such Credit Party being responsible for such Person's compliance with this paragraph)), (b) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (1) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (2) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) on a confidential basis to (1) any rating agency in

connection with rating the Borrower or its Subsidiaries or the credit facility provided for herein or (2) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facility provided for herein, (h) with the prior written consent of the Borrower or (i) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower and the Subsidiaries. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower, the Subsidiaries or its or their business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN THE IMMEDIATELY PRECEDING PARAGRAPH FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

**ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.**

SECTION 9.13. USA PATRIOT Act. Each Lender that is subject to the requirements of the Patriot Act hereby notifies each Loan Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Patriot Act.

SECTION 9.14. Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the Secured Parties, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or

control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

SECTION 9.15. Releases of Subsidiary Guarantors.

(a) A Subsidiary Guarantor shall automatically be released from its obligations under the Subsidiary Guaranty upon the consummation of any transaction permitted by this Agreement as a result of which such Subsidiary Guarantor ceases to be a Subsidiary; provided that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise. In connection with any termination or release pursuant to this Section, the Administrative Agent shall (and is hereby irrevocably authorized by each Lender to) execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent.

(b) Further, the Administrative Agent shall (and is hereby irrevocably authorized by each Lender to), upon the request of the Borrower, release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty if such Subsidiary Guarantor is no longer a Material Domestic Subsidiary; provided that, notwithstanding the foregoing or anything else contained in the Loan Documents, if any Subsidiary Guarantor ceases to be a Material Domestic Subsidiary, such Subsidiary Guarantor shall automatically cease to be a Subsidiary Guarantor.

(c) At such time as the principal and interest on the Loans, the fees, expenses and other amounts payable under the Loan Documents and the other Secured Obligations (other than Banking Services Obligations, Swap Obligations, and Unliquidated Obligations) shall have been paid in full in cash, the Commitments shall have been terminated, the Subsidiary Guaranty and all obligations (other than those expressly stated to survive such termination) of each Subsidiary Guarantor thereunder shall automatically terminate, all without delivery of any instrument or performance of any act by any Person.

SECTION 9.16. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.17. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document),

the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Lenders and their Affiliates, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Lenders and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) no Lender or any of its Affiliates has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except, in the case of a Lender, those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and no Lender or any of its Affiliates has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against each of the Lenders and their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.18. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

ARTICLE X

Borrower Guarantee

In order to induce the Lenders to extend credit to the Borrower hereunder and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Borrower hereby absolutely and irrevocably and unconditionally guarantees, as a primary obligor and not merely as a surety, the payment when and as due of the Specified Ancillary Obligations of the Subsidiaries. The Borrower further agrees that the due and punctual payment of such Specified Ancillary Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee hereunder notwithstanding any such extension or renewal of any such Specified Ancillary Obligation.

The Borrower waives presentment to, demand of payment from and protest to any Subsidiary of any of the Specified Ancillary Obligations, and also waives notice of acceptance of its obligations and notice of protest for nonpayment. The obligations of the Borrower hereunder shall not be affected by (a) the failure of any applicable Lender (or any of its Affiliates) to assert any claim or demand or to enforce any right or remedy against any Subsidiary under the provisions of any Banking Services Agreement, any Swap Agreement or otherwise; (b) any extension or renewal of any of the Specified Ancillary Obligations; (c) any rescission, waiver, amendment or modification of, or release from, any of the terms or provisions of this Agreement, any other Loan Document, any Banking Services Agreement, any Swap Agreement or other agreement; (d) any default, failure or delay, willful or otherwise, in the performance of any of the Specified Ancillary Obligations; (e) the failure of any applicable Lender (or any of its Affiliates) to take any steps to perfect and maintain any security interest in, or to preserve any rights to, any security or collateral for the Specified Ancillary Obligations, if any; (f) any change in the corporate, partnership or other existence, structure or ownership of any Subsidiary or any other guarantor of any of the Specified Ancillary Obligations; (g) the enforceability or validity of the Specified Ancillary Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto or with respect to any collateral securing the Specified Ancillary Obligations or any part thereof, or any other invalidity or unenforceability relating to or against any Subsidiary or any other guarantor of any of the Specified Ancillary Obligations, for any reason related to this Agreement, any other Loan Document, any Banking Services Agreement, any Swap Agreement, or any provision of applicable law, decree, order or regulation of any jurisdiction purporting to prohibit the payment by such Subsidiary or any other guarantor of the Specified Ancillary Obligations, of any of the Specified Ancillary Obligations or otherwise affecting any term of any of the Specified Ancillary Obligations; or (h) any other act, omission or delay to do any other act which may or might in any manner or to any extent vary the risk of the Borrower or otherwise operate as a discharge of a guarantor as a matter of law or equity or which would impair or eliminate any right of the Borrower to subrogation.

The Borrower further agrees that its agreement hereunder constitutes a guarantee of payment when due (whether or not any bankruptcy or similar proceeding shall have stayed the accrual or collection of any of the Specified Ancillary Obligations or operated as a discharge thereof) and not merely of collection, and waives any right to require that any resort be had by any applicable Lender (or any of its Affiliates) to any balance of any deposit account or credit on the books of the Administrative Agent or any Lender in favor of any Subsidiary or any other Person.

The obligations of the Borrower hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever, by reason of the invalidity, illegality or unenforceability of any of the Specified Ancillary Obligations, any impossibility in the performance of any of the Specified Ancillary Obligations or otherwise.

The Borrower further agrees that its obligations hereunder shall constitute a continuing and irrevocable guarantee of all Specified Ancillary Obligations now or hereafter existing and shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Specified Ancillary Obligation (including a payment effected through exercise of a right of setoff) is rescinded, or is or must otherwise be restored or returned by any applicable Lender (or any of its Affiliates) upon the insolvency, bankruptcy or reorganization of any Subsidiary or otherwise (including pursuant to any settlement entered into by a holder of Specified Ancillary Obligations in its discretion).

In furtherance of the foregoing and not in limitation of any other right which any applicable Lender (or any of its Affiliates) may have at law or in equity against the Borrower by virtue hereof, upon the failure of any Subsidiary to pay any Specified Ancillary Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, the Borrower hereby promises to and will, upon receipt of written demand by any applicable Lender (or any of its Affiliates), forthwith pay, or cause to be paid, to such applicable Lender (or any of its Affiliates) in cash an amount equal to the unpaid principal amount of such Specified Ancillary Obligations then due, together with accrued and unpaid interest thereon. The Borrower further agrees that if payment in respect of any Specified Ancillary Obligation shall be due in a currency other than Dollars and/or at a place of payment other than New York or Chicago and if, by reason of any Change in Law, disruption of currency or foreign exchange markets, war or civil disturbance or other event, payment of such Specified Ancillary Obligation in such currency or at such place of payment shall be impossible or, in the reasonable judgment of any applicable Lender (or any of its Affiliates), disadvantageous to such applicable Lender (or any of its Affiliates) in any material respect, then, at the election of such applicable Lender, the Borrower shall make payment of such Specified Ancillary Obligation in Dollars and/or in New York or Chicago and, as a separate and independent obligation, shall indemnify such applicable Lender (and any of its Affiliates) against any losses or reasonable out-of-pocket expenses that it shall sustain as a result of such alternative payment.

Upon payment by the Borrower of any sums as provided above, all rights of the Borrower against any Subsidiary arising as a result thereof by way of right of subrogation or otherwise shall in all respects be subordinated and junior in right of payment to the prior indefeasible payment in full in cash of all the Specified Ancillary Obligations owed by such Subsidiary to the applicable Lender (or its applicable Affiliates).

Nothing shall discharge or satisfy the liability of the Borrower hereunder except the full performance and payment in cash of the Secured Obligations (other than Unliquidated Obligations).

The Borrower hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each Subsidiary Guarantor to honor all of its obligations under the Subsidiary Guaranty in respect of Specified Swap Obligations (provided, however, that the Borrower shall only be liable under this paragraph for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this paragraph or otherwise under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The Borrower intends that this paragraph constitute, and this paragraph shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each Subsidiary Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

[Signature Pages Follow]

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

MYRIAD GENETICS, INC.,
as the Borrower

By _____
Name:
Title:

JPMORGAN CHASE BANK, N.A., individually as a Lender and as Administrative Agent

By _____
Name:
Title:

SCHEDULE 2.01

COMMITMENTS

| LENDER | COMMITMENT |
| --- | --- |
| JPMORGAN CHASE BANK, N.A. | $ 200,000,000 |
| **AGGREGATE COMMITMENTS** | **$ 200,000,000** |

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement identified below (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____
   [and is an Affiliate/Approved Fund of [identify Lender][1]]

3. Borrower(s): Myriad Genetics, Inc.

4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: The Credit Agreement dated as of August 31, 2016 among Myriad Genetics, Inc., the Lenders parties thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, and the other agents parties thereto

6. Assigned Interest:

| Aggregate Amount of Commitment/Loans for all Lenders | Amount of Commitment/ Loans Assigned | Percentage Assigned of Commitment/Loans[2] |
|---|---|---|
| $ | $ | % |
| $ | $ | % |
| $ | $ | % |

1 Select as applicable.

2 Set forth, so at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

Effective Date: ____ __, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Title:

Consented to and Accepted:

JPMORGAN CHASE BANK, N.A., as Administrative Agent

By: _____
Title:

[Consented to:][3]

MYRIAD GENETICS, INC.

By: _____
Title:

[3] To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

ANNEX I

STANDARD TERMS AND CONDITIONS FOR

ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and the Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Electronic System shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT B

FORM OF SOLVENCY CERTIFICATE

[_____]

This Solvency Certificate is being executed and delivered pursuant to Section 4.01(e) of the Credit Agreement (the "Credit Agreement") dated as of August 31, 2016 among Myriad Genetics, Inc. (the "Company"), the lenders party thereto from time to time and JPMorgan Chase Bank, N.A., as the administrative agent; the terms defined therein being used herein as therein defined.

I, **[_____]**, the chief financial officer of the Company, solely in such capacity and not in an individual capacity, hereby certify that I am the chief financial officer of the Company and that I am generally familiar with the businesses and assets of the Company and its Subsidiaries (taken as a whole), I have made such other investigations and inquiries as I have deemed appropriate and I am duly authorized to execute this Solvency Certificate on behalf of the Company pursuant to the Credit Agreement.

I further certify, solely in my capacity as chief financial officer of the Company, and not in my individual capacity, as of the date hereof and after giving effect to the Transactions and the incurrence of the indebtedness and obligations being incurred in connection with the Credit Agreement and the Transactions on the date hereof, that: (i) the fair value of the assets of the Company and its Subsidiaries, taken as a whole, at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of the Company and its Subsidiaries, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Company and its Subsidiaries, taken as a whole, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Company and its Subsidiaries, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted after the Closing Date.

**[**Remainder of page intentionally left blank**]**

IN WITNESS WHEREOF, I have executed this Solvency Certificate on the date first written above.

By: _____
Name: [_____]
Title: Chief Financial Officer

EXHIBIT C-1

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of August 31, 2016 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Myriad Genetics, Inc., a Delaware corporation (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____, 20[__]

EXHIBIT C-2

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of August 31, 2016 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Myriad Genetics, Inc., a Delaware corporation (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:
Date: ____ __, 20[__]

EXHIBIT C-3

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of August 31, 2016 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Myriad Genetics, Inc., a Delaware corporation (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[__]

EXHIBIT C-4

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of August 31, 2016 (as amended, restated, amended and restated supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Myriad Genetics, Inc, a Delaware corporation (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____ __, 20[__]

EXHIBIT D-1

FORM OF BORROWING REQUEST

JPMorgan Chase Bank, N.A.,
as Administrative Agent
for the Lenders referred to below

10 South Dearborn, Floor L2
Chicago, Illinois 60603
Attention: Loan and Agency Services
Facsimile: (888) 292-9533

With a copy to:

712 Main Street, Floor 8 North
Houston, Texas 77002
Attention: Laura S. Woodward
Facsimile: 713-216-671

Re: MYRIAD GENETICS, INC.

[Date]

Ladies and Gentlemen:

Reference is hereby made to the Credit Agreement dated as of August 31, 2016 (as the same may be amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Myriad Genetics, Inc., a Delaware corporation (the "Borrower"), the Lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement. The Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Borrowing under the Credit Agreement, and in connection therewith the Borrower specifies the following information with respect to the Borrowing requested hereby:

1. Aggregate principal amount of Borrowing:[1] _____
2. Date of Borrowing (which shall be a Business Day): _____
3. Type of Borrowing (ABR or Eurodollar): _____
4. Interest Period and the last day thereof (if a Eurodollar Borrowing):[2] _____
5. Location and number of the Borrower's account or any other account agreed upon by the Administrative Agent and the Borrower to which proceeds of Borrowing are to be disbursed: _____

[Signature Page Follows]

1 Not less than applicable amounts specified in Section 2.02(c).
2 Which must comply with the definition of "Interest Period" and end not later than the Maturity Date.

The undersigned hereby represents and warrants that the conditions to lending specified in Section [4.01] [4.02] of the Credit Agreement are satisfied as of the date [of the proposed Borrowing on the Effective Date][hereof].

Very truly yours,

MYRIAD GENETICS, INC.,
as the Borrower

By: _____
Name:
Title:

EXHIBIT D-2

FORM OF INTEREST ELECTION REQUEST

JPMorgan Chase Bank, N.A.,
as Administrative Agent
for the Lenders referred to below

10 South Dearborn, Floor L2
Chicago, Illinois 60603
Attention: Loan and Agency Services
Facsimile: (888) 292-9533

With a copy to:

712 Main Street, Floor 8 North
Houston, Texas 77002
Attention: Laura S. Woodward
Facsimile: 713-216-671

Re: Myriad Genetics, Inc.

[Date]

Ladies and Gentlemen:

Reference is hereby made to the Credit Agreement dated as of August 31, 2016 (as the same may be amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Credit Agreement"), among Myriad Genetics, Inc., a California corporation (the "Borrower"), the Lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement. The Borrower hereby gives you notice pursuant to Section 2.08 of the Credit Agreement that it requests to [convert][continue] an existing Borrowing under the Credit Agreement, and in connection therewith the Borrower specifies the following information with respect to the [conversion][continuation] requested hereby:

1. List date, Type, principal amount and Interest Period (if applicable) of existing Borrowing: _____
2. Aggregate principal amount of resulting Borrowing: _____
3. Effective date of interest election (which shall be a Business Day): _____
4. Type of Borrowing (ABR or Eurodollar): _____
5. Interest Period and the last day thereof (if a Eurodollar Borrowing):[1] _____

[Signature Page Follows]

[1] Which must comply with the definition of "Interest Period" and end not later than the Maturity Date.

Very truly yours,

MYRIAD GENETICS, INC.,
as Borrower

By: _____
Name:
Title:

**Exhibit 10.3**

# INDEMNIFICATION AGREEMENT

**THIS INDEMNIFICATION AGREEMENT** (this "***Agreement***") is made and entered into this 26th day of September, 2016, by and between **MYRIAD GENETICS, INC.**, a Delaware corporation (the "***Corporation***"), and Virginia C. Drosos ("***Agent***").

## RECITALS

**WHEREAS**, Agent performs a valuable service to the Corporation in his capacity as an officer of the Corporation, or as an officer of one of the wholly-owned subsidiaries of the Corporation;

**WHEREAS**, the Corporation has adopted provisions providing for indemnification of directors and officers in its Certificate of Incorporation (the "***Charter***") and Bylaws (the "***Bylaws***") that include provisions providing for the indemnification of the directors, officers, employees and other agents of the Corporation, including persons serving at the request of the Corporation in such capacities with other corporations or enterprises, as authorized by the Delaware General Corporation Law, as amended (the "***DGCL***");

**WHEREAS**, the Charter, the Bylaws and the DGCL, by their non-exclusive nature, permit contracts between the Corporation and its directors, officers, employees and other agents with respect to indemnification of such persons;

**WHEREAS**, in recognition of Agent's need for (a) substantial protection against personal liability based on Agent's reliance on the Charter and the Bylaws, and (b) specific contractual assurance that the protection provided in the Charter and the Bylaws will be available to Agent (regardless of, among other things, any amendment to or revocation of the Charter and/or the Bylaws, any change in the composition of the Corporation's board of directors or a change in control of the Corporation); and

**WHEREAS**, in order to induce Agent to continue to serve as an officer of the Corporation, the Corporation has determined and agreed to enter into this Agreement with Agent.

**NOW, THEREFORE**, in consideration of Agent's service as an officer of the Corporation following the date hereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Corporation and Agent hereby agree as follows:

**1. Services to the Corporation**. Agent will serve, at the will of the Corporation or under separate contract, if any such contract exists, as an officer of the Corporation or as a director, officer or other fiduciary of an affiliate of the Corporation (including any employee benefit plan of the Corporation) faithfully and to the best of his ability so long as he is a duly appointed officer of the Corporation or such affiliate; *provided, however*, that Agent may at any time and for any reason resign from such position (subject to any contractual obligation that Agent may have assumed apart from this Agreement) and that the Corporation or any affiliate shall have no obligation under this Agreement to continue Agent in any such position.

**2. Indemnity of Agent**. The Corporation agrees to hold harmless and indemnify Agent to the fullest extent authorized or permitted by the provisions of the Charter, the Bylaws and the DGCL, as the same may be amended from time to time (but, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the Charter, the Bylaws or the DGCL permitted prior to adoption of such amendment).

**3. Additional Indemnity**. In addition to and not in limitation of the indemnification otherwise provided for herein, and subject only to the exclusions set forth in Section 4 hereof, the Corporation further agrees to hold harmless and indemnify Agent:

**(a)** against any and all expenses (including attorneys' fees), witness fees, damages, judgments, fines and amounts paid in settlement and any other amounts that Agent becomes legally obligated to pay (including any federal, state or local taxes imposed on Agent as a result of receipt of reimbursements or advances of expenses under this Agreement) because of any claim or claims made against or by him in connection with any threatened, pending or completed action, suit or proceeding, including any appeal and the premium, security for, and other costs relating to any costs bond, supersedes bond, or other appeal bond or its equivalent, whether civil, criminal, arbitrational, administrative or investigative, whether formal or informal (including an action by or in the right of the Corporation), to which Agent is, was or at any time becomes a party or a witness, or is threatened to be made a party or a witness, by reason of the fact that Agent is, was or at any time becomes a director, officer, employee or other agent of the Corporation, or is or was serving or at any time serves at the request of the Corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise; and

**(b)** otherwise to the fullest extent as may be provided to Agent by the Corporation under the non-exclusivity provisions of the DGCL, the Charter and the Bylaws.

**4. Limitations on Additional Indemnity**. No indemnity pursuant to Section 3 hereof shall be paid by the Corporation:

**(a)** on account of any claim or proceeding against Agent for an accounting of profits made from the purchase or sale by Agent of securities of the Corporation pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as heretofore or hereafter amended (the "***Exchange Act***"), or similar provisions of any federal, state or local law, *provided, however*, if and when Agent ultimately establishes in any such proceeding that no recovery of profits from Agent is permitted under Section 16(b) of the Exchange Act or such similar provision of any similar federal, state or local law, then, notwithstanding anything to the contrary provided in this Section 4(a), indemnification pursuant to this Agreement shall then be permitted;

**(b)** on account of Agent's conduct that is established by a final judgment as knowingly fraudulent or deliberately dishonest or that constituted willful misconduct;

**(c)** on account of Agent's conduct that is established by a final judgment as constituting a breach of Agent's duty of loyalty to the Corporation or resulting in any personal profit or advantage to which Agent was not legally entitled;

**(d)** for which payment is actually made to Agent under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, bylaw or agreement, except in respect of any excess beyond payment under such insurance, clause, bylaw or agreement;

**(e)** if indemnification is not lawful (and, in this respect, both the Corporation and Agent have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication); or

**(f)** in connection with any proceeding (or part thereof) initiated by Agent, or any proceeding by Agent against the Corporation or its directors, officers, employees or other agents, unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the board of directors of the Corporation, (iii) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under the DGCL, or (iv) the proceeding is initiated pursuant to Section 11 hereof.

**5. Continuation of Indemnity**. All agreements and obligations of the Corporation contained herein shall continue during the period Agent is a director, officer, employee or other agent of the Corporation (or is or was serving at the request of the Corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise) and shall continue thereafter so long as Agent shall be subject to any possible claim or threatened, pending or completed action, suit or proceeding, whether civil, criminal, arbitrational, administrative or investigative, by reason of the fact that Agent was serving in the capacity referred to herein.

**6. Partial Indemnification**. Agent shall be entitled under this Agreement to indemnification by the Corporation for a portion of the expenses (including attorneys' fees), witness fees, damages, judgments, fines and amounts paid in settlement and any other amounts that Agent becomes legally obligated to pay in connection with any action, suit or proceeding referred to in Section 3 hereof even if not entitled hereunder to indemnification for the total amount thereof, and the Corporation shall indemnify Agent for the portion thereof to which Agent is entitled.

**7. Notification and Defense of Claim**. As soon as practicable, and in any event, not later than thirty (30) days after Agent becomes aware, by written or other overt communication, of any pending or threatened litigation, claim or assessment, Agent will, if a claim in respect thereof is to be made against the Corporation under this Agreement, notify the Corporation of such pending or threatened litigation, claim or assessment; but the omission so to notify the Corporation will not relieve it from any liability which it may have to Agent otherwise than under this Agreement. With respect to any such pending or threatened litigation, claim or assessment as to which Agent notifies the Corporation of the commencement thereof:

**(a)** the Corporation will be entitled to participate therein at its own expense;

**(b)** except as otherwise provided below, the Corporation may, at its option and jointly with any other indemnifying party similarly notified and electing to assume such defense, assume the defense thereof, with counsel reasonably satisfactory to Agent. After notice from the Corporation to Agent of its election to assume the defense thereof, the Corporation will not be liable to Agent under this Agreement for any legal or other expenses subsequently incurred by Agent in connection with the defense thereof except for reasonable costs of investigation or otherwise as provided below. Agent shall have the right to employ separate counsel in such action, suit or proceeding but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Agent unless (i) the employment of counsel by Agent has been authorized by the Corporation, (ii) Agent shall have reasonably concluded, and so notified the Corporation, that there is an actual conflict of interest between the Corporation and Agent in the conduct of the defense of such action, or (iii) the Corporation shall not in fact have employed counsel to assume the defense of Agent in connection with such action, in any

of such cases the fees and expenses of Agent's separate counsel shall be at the expense of the Corporation. The Corporation shall not be entitled to assume the defense of any action, suit or proceeding brought by or on behalf of the Corporation or as to which Agent shall have made the conclusion provided for in clause (ii) above; and

**(c)** the Corporation shall not be liable to indemnify Agent under this Agreement for any amounts paid in settlement of any action or claim effected without its written consent, which shall not be unreasonably withheld or delayed. The Corporation shall be permitted to settle any action or claim except that it shall not settle any action or claim in any manner which would impose any penalty or limitation on Agent without Agent's written consent, which may be given or withheld in Agent's sole discretion.

**8. Expenses**. The Corporation shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses incurred by Agent in connection with such proceeding upon the Corporation's receipt of an undertaking by or on behalf of Agent to repay said amounts if it shall be determined ultimately that Agent is not entitled to be indemnified under the provisions of this Agreement, the Charter, the Bylaws, the DGCL or otherwise. Such undertaking shall be accepted by the Corporation without regard to the financial ability of Agent to make such repayment. Without limiting the foregoing, if any action, suit or proceeding is disposed of on the merits or otherwise (including a disposition without prejudice), without (i) the final disposition being adverse to Agent, (ii) a final adjudication that Agent was liable to the Corporation, (iii) a plea of guilty (iv) a final adjudication that Agent did not act in good faith, and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, or (v) with respect to any criminal proceeding, a final adjudication that Agent had reasonable cause to believe his conduct was unlawful, Agent shall be considered for the purposes hereof to have been wholly successful with respect thereto.

**9. Information Sharing**. To the extent that the Corporation receives a request or requests from a governmental third party or other licensing or regulating organization (the "***Requesting Agency***"), whether formal or informal, to produce documentation or other information concerning an investigation, whether formal or informal, being conducted by the Requesting Agency, and such investigation is reasonably likely to include review of any actions or failures to act by Agent, the Corporation shall promptly give notice to Agent of said request or requests and any subsequent request. In addition, the Corporation shall provide Agent with a copy of any and all information or documentation that the Corporation shall provide to the Requesting Agency.

**10. No Imputation**. The knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Corporation or the Corporation itself shall not be imputed to Agent for purposes of determining any rights under this Agreement.

**11. Enforcement**. Any right to indemnification or advances granted by this Agreement to Agent shall be enforceable by or on behalf of Agent in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. Agent, in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. It shall be a defense to any action for which a claim for indemnification is made under Section 3 hereof (other than an action brought to enforce a claim for advance or reimbursement of expenses under this Agreement, *provided* that the required undertaking has been tendered to the Corporation) that Agent is not entitled to indemnification because of the limitations set forth in Section 4 hereof. Neither the failure of the Corporation (including its board of directors or its stockholders) to have

made a determination prior to the commencement of such enforcement action that indemnification of Agent is proper in the circumstances, nor an actual determination by the Corporation (including its board of directors or its stockholders) that such indemnification is improper shall be a defense to the action or create a presumption that Agent is not entitled to indemnification under this Agreement or otherwise.

**12. Subrogation**. In the event of payment under this Agreement, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of Agent, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Corporation effectively to bring suit to enforce such rights.

**13. Non-Exclusivity of Rights**. The rights conferred on Agent by this Agreement shall not be exclusive of any other right which Agent may have or hereafter acquire under any statute, provision of the Charter or Bylaws, agreement, vote of stockholders or directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding office.

**14. Survival of Rights**.

**(a)** The rights conferred on Agent by this Agreement shall continue after Agent has ceased to be a director, officer, employee or other agent of the Corporation or to serve at the request of the Corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and shall inure to the benefit of Agent's heirs, executors and administrators.

**(b)** The Corporation shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place.

**15. Separability**. Each of the provisions of this Agreement is a separate and distinct agreement and independent of the others, so that if any provision hereof shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions hereof. Furthermore, if this Agreement shall be invalidated in its entirety on any ground, then the Corporation shall nevertheless indemnify Agent to the fullest extent provided by the Charter, the Bylaws, the DGCL or any other applicable law.

**16. Governing Law**. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its principles of conflicts of laws. The Corporation and Agent hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement may be brought in the Delaware Court of Chancery, (ii) consent to submit to the jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

**17. Amendment and Termination**. No amendment, modification, termination or cancellation of this Agreement shall be effective unless in writing signed by both parties hereto.

**18. Identical Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

**19. Notices**. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) upon delivery if delivered by hand to the party to whom such communication was directed or (ii) upon the third business day after the date on which such communication was mailed if mailed by certified or registered mail with postage prepaid:

**(a)** If to Agent, at the address indicated on the signature page hereof.

**(b)** If to the Corporation, to:

Myriad Genetics, Inc.
320 Wakara Way
Salt Lake City, UT 84108
Attention: Chief Executive Officer
General Counsel

or to such other address as may have been furnished to Agent by the Corporation.

**20. Headings**. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

**MYRIAD GENETICS, INC.**

By: _____
Name: Mark C. Capone
Title: President and CEO

**AGENT**

/s/ Virginia C. Drosos
Virginia C. Drosos

Address:

_____

_____

**MYRIAD GENETICS, INC.**

Executive Retention Agreement

THIS EXECUTIVE RETENTION AGREEMENT (this "Agreement"), by and between Myriad Genetics, Inc., a Delaware corporation (the "Company"), and Virginia C. Drosos (the "Executive"), is made as of September 26, 2016 (the "Effective Date").

WHEREAS, the Company recognizes that, as is the case with many publicly-held corporations, the possibility of a change in control of the Company exists and that such possibility, and the uncertainty and questions which it may raise among key personnel, may result in the departure or distraction of key personnel to the detriment of the Company and its stockholders, and

WHEREAS, the Board of Directors of the Company (the "Board") has determined that appropriate steps should be taken to reinforce and encourage the continued employment and dedication of the Company's key personnel without distraction from the possibility of a change in control of the Company and related events and circumstances.

NOW, THEREFORE, as an inducement for and in consideration of the Executive remaining in its employ, the Company agrees that the Executive shall receive the benefits set forth in this Agreement, including without limitation, those benefits in the event the Executive's employment with the Company is terminated under the circumstances described below subsequent to a Change in Control (as defined in Section 1.1).

1. Key Definitions.

As used herein, the following terms shall have the following respective meanings:

1.1 "Change in Control" means an event or occurrence set forth in any one or more of subsections (a) through (d) below (including an event or occurrence that constitutes a Change in Control under one of such subsections but is specifically exempted from another such subsection):

(a) the acquisition by an individual, entity or group (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (a "Person") of beneficial ownership of any capital stock of the Company if, after such acquisition, such Person beneficially owns (within the meaning of Rule 13d-3 promulgated under the Exchange Act) 20% or more of either (i) the then-outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then-outstanding securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change in Control: (i) any acquisition directly from the Company (excluding an acquisition pursuant to the exercise, conversion or exchange of any security exercisable for, convertible into or exchangeable for common stock or voting securities of the Company, unless the Person exercising, converting or exchanging such security acquired such security directly from the

Company or an underwriter or agent of the Company), (ii) any acquisition by the Company, or (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company; or

(b) such time as the Continuing Directors (as defined below) do not constitute a majority of the Board (or, if applicable, the Board of Directors of a successor corporation to the Company), where the term "Continuing Director" means at any date a member of the Board (i) who was a member of the Board on the date of the execution of this Agreement or (ii) who was nominated or elected subsequent to such date by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the Board was recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election; provided, however, that there shall be excluded from this clause (ii) any individual whose initial assumption of office occurred as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents, by or on behalf of a person other than the Board; or

(c) the consummation of a merger, consolidation, reorganization, recapitalization or share exchange involving the Company or a sale or other disposition of all or substantially all of the assets of the Company in one or a series of transactions (a "Business Combination"), unless, immediately following such Business Combination, the following condition is satisfied: all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding securities entitled to vote generally in the election of directors, respectively, of the resulting or acquiring corporation in such Business Combination (which shall include, without limitation, a corporation which as a result of such transaction owns the Company or substantially all of the Company's assets either directly or through one or more subsidiaries) (such resulting or acquiring corporation is referred to herein as the "Acquiring Corporation") in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, respectively; or

(d) approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

1.2 "Change in Control Date" means the first date during the Term (as defined in Section 2) on which a Change in Control occurs. Anything in this Agreement to the contrary notwithstanding, if (a) a Change in Control occurs, (b) the Executive's employment with the Company is terminated prior to the date on which the Change in Control occurs, and (c) it is reasonably demonstrated by the Executive that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control or (ii) otherwise arose in connection with or in anticipation of a Change in Control, then for all purposes of this Agreement the "Change in Control Date" shall mean the date immediately prior to the date of such termination of employment.

1.3 "Cause" means:

(a) the Executive's willful and continued failure to substantially perform his or her reasonable assigned duties (other than any such failure resulting from incapacity due to physical or mental illness or any failure after the Executive gives notice of termination for Good Reason), which failure is not cured within 30 days after a written demand for substantial performance is received by the Executive from the Board of Directors of the Company which specifically identifies the manner in which the Board of Directors believes the Executive has not substantially performed the Executive's duties; or

(b) the Executive's willful engagement in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company.

For purposes of this Section 1.3, no act or failure to act by the Executive shall be considered "willful" unless it is done, or omitted to be done, in bad faith and without reasonable belief that the Executive's action or omission was in the best interests of the Company.

1.4 "Good Reason" means the occurrence, without the Executive's written consent, of any of the events or circumstances set forth in clauses (a) through (f) below.

(a) the assignment to the Executive of duties inconsistent in any material respect with the Executive's position (including status, offices, titles and reporting requirements), authority or responsibilities in effect immediately prior to the earliest to occur of (i) the Change in Control Date, (ii) the date of the execution by the Company of the initial written agreement or instrument providing for the Change in Control or (iii) the date of the adoption by the Board of Directors of a resolution providing for the Change in Control (with the earliest to occur of such dates referred to herein as the "Measurement Date"), or any other action or omission by the Company which results in a material diminution in such position, authority or responsibilities;

(b) a material reduction in the Executive's annual base salary as in effect on the Measurement Date;

(c) the failure by the Company to (i) continue in effect any material compensation, pension, retirement or benefit plan or program (including without limitation any 401(k), life insurance, medical, health and accident or disability plan and any vacation program or policy) (a "Benefit Plan") in which the Executive participates or which is applicable to the Executive immediately prior to the Measurement Date, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan or program, (ii) continue the Executive's participation therein (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of the Executive's participation relative to other participants, than the basis existing immediately prior to the Measurement Date or (iii) award cash bonuses to the Executive in amounts and in a manner substantially consistent with past practice;

(d) a change by the Company in the location at which the Executive performs his or her principal duties for the Company to a new location that is both (i) outside a radius of 50 miles from the Executive's principal residence immediately prior to the

Measurement Date and (ii) more than 50 miles from the location at which the Executive performed his or her principal duties for the Company immediately prior to the Measurement Date; or a requirement by the Company that the Executive travel on Company business to a substantially greater extent than required immediately prior to the Measurement Date;

(e) the failure of the Company to obtain the agreement from any successor to the Company to assume and agree to perform this Agreement, as required by Section 7.1; or

(f) any failure of the Company to pay or provide to the Executive any portion of the Executive's compensation or benefits due under any Benefit Plan within seven days of the date such compensation or benefits are due, or any material breach by the Company of this Agreement or any employment agreement with the Executive.

In addition, in an effort to foster and retain the employment of the Executive following a Change in Control, the termination of employment by the Executive for any reason (except for those set forth in section 1.4(a)-(f)), or no reason, during the 90-day period beginning on the first anniversary of the Change in Control Date shall be deemed to be termination for Good Reason for all purposes under this Agreement; however, in the case of a termination of employment by the Executive pursuant to this paragraph, those benefits payable to the Executive under section 4.1(a)(i)(2) shall be reduced by one-half.

The Executive's right to terminate his or her employment for Good Reason shall not be affected by his or her incapacity due to physical or mental illness.

1.5 "Disability" means the Executive's absence from the full-time performance of the Executive's duties with the Company for 180 consecutive calendar days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

2. Term of Agreement. This Agreement, and all rights and obligations of the parties hereunder, shall take effect upon the Effective Date and shall expire upon the first to occur of (a) the expiration of the Term (as defined below) if a Change in Control has not occurred during the Term, (b) the date 24 months after the Change in Control Date, if the Executive is still employed by the Company as of such later date, or (c) the fulfillment by the Company of all of its obligations under this Agreement if the Executive's employment with the Company terminates within 24 months following the Change in Control Date. "Term" shall mean the period commencing as of the Effective Date and continuing in effect through December 31, 2016; provided, however, that commencing on January 1, 2017 and each January 1 thereafter, the Term shall be automatically extended for one additional year unless, not later than 90 days prior to the scheduled expiration of the Term (or any extension thereof), the Company shall have given the Executive written notice that the Term will not be extended.

3. Employment Status; Termination Following Change in Control.

3.1 Not an Employment Contract. The Executive acknowledges that this Agreement does not constitute a contract of employment or impose on the Company any

obligation to retain the Executive as an employee and that this Agreement does not prevent the Executive from terminating employment at any time. If the Executive's employment with the Company terminates for any reason and subsequently a Change in Control shall occur, the Executive shall not be entitled to any benefits hereunder except as otherwise provided pursuant to Section 1.2.

3.2 Termination of Employment.

(a) If the Change in Control Date occurs during the Term, any termination of the Executive's employment by the Company or by the Executive within 24 months following the Change in Control Date (other than due to the death of the Executive) shall be communicated by a written notice to the other party hereto (the "Notice of Termination"), given in accordance with Section 8. Any Notice of Termination shall: (i) indicate the specific termination provision (if any) of this Agreement relied upon by the party giving such notice, (ii) to the extent applicable, set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) specify the Date of Termination (as defined below). The effective date of an employment termination (the "Date of Termination") shall be the close of business on the date specified in the Notice of Termination (which date may not be less than 15 days or more than 120 days after the date of delivery of such Notice of Termination) in the case of a termination other than one due to the Executive's death. In the case of the Executive's death, the Date of Termination shall be the date of the Executive's death. In the event the Company fails to satisfy the requirements of Section 3.2(a) regarding a Notice of Termination, the purported termination of the Executive's employment pursuant to such Notice of Termination shall not be effective for purposes of this Agreement.

(b) The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting any such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(c) Any Notice of Termination for Cause given by the Company must be given within 90 days of the occurrence (or if later, the discovery) of the event(s) or circumstance(s) which constitute(s) Cause. Prior to any Notice of Termination for Cause being given (and prior to any termination for Cause being effective), the Executive shall be entitled to a hearing before the Board of Directors of the Company at which he or she may, at his or her election, be represented by counsel and at which he or she shall have a reasonable opportunity to be heard. Such hearing shall be held on not less than 15 days prior written notice to the Executive stating the Board of Directors' intention to terminate the Executive for Cause and stating in detail the particular event(s) or circumstance(s) which the Board of Directors believes constitutes Cause for termination.

(d) Any Notice of Termination for Good Reason given by the Executive must be given within 90 days of the occurrence of the event(s) or circumstance(s) which constitute(s) Good Reason.

4. Benefits to Executive.

4.1 Benefits. If a Change in Control Date occurs during the Term and the Executive's employment with the Company terminates within 24 months following the Change in Control Date, the Executive shall be entitled to the following benefits:

(a) Termination Without Cause or for Good Reason. If the Executive's employment with the Company is terminated by the Company (other than for Cause, Disability or Death) or by the Executive for Good Reason within 24 months following the Change in Control Date, then the Executive shall be entitled to the following benefits:

(i) the Company shall pay to the Executive the following amounts:

(1) in a lump sum, in cash, within 30 days after the Date of Termination, the sum of (A) the Executive's base salary through the Date of Termination, (B) a pro rata current year bonus amount (calculated by dividing the number of full and partial months of the current fiscal year in which the Executive is employed through the Date of Termination by 12, and multiplying this fraction by the highest annual bonus payment amount paid to Executive in the preceding three years), and (C) any accrued vacation pay, in each case to the extent not previously paid (the sum of the amounts described in clauses (A), (B), and (C) shall be hereinafter referred to as the "Accrued Obligations"); and

(2) in a lump sum, in cash, within 30 days after the Date of Termination, the sum of (A) three times the Executive's highest annual base salary at the Company during the three-year period prior to the Change in Control Date and (B) three times the Executive's highest annual bonus amount at the Company during the three-year period prior to the Change in Control Date;

(ii) for 36 months after the Date of Termination, or such longer period as may be provided by the terms of the appropriate plan, program, practice or policy, each month the Company shall continue to provide benefits to the Executive and the Executive's family at least equal to those which would have been provided to them if the Executive's employment had not been terminated, in accordance with the applicable Benefit Plans in effect on the Measurement Date or, if more favorable to the Executive and his or her family, in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies; provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive a particular type of benefits (e.g., health insurance benefits) from such employer on terms at least as favorable to the Executive and his or her family as those being provided by the Company, then the Company shall no longer be required to provide those particular benefits to the Executive and his or her family; and

(iii) to the extent not previously paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive following the Executive's termination of employment under any plan, program, policy, practice, contract or agreement of the Company and its affiliated companies (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

(b) Resignation without Good Reason; Termination for Death or Disability. If the Executive voluntarily terminates his or her employment with the Company within 24 months following the Change in Control Date, excluding a termination for Good Reason, or if the Executive's employment with the Company is terminated by reason of the Executive's death or Disability within 24 months following the Change in Control Date, then the Company shall (i) pay the Executive (or his or her estate, if applicable), in a lump sum in cash within 30 days after the Date of Termination, the Accrued Obligations and (ii) timely pay or provide to the Executive the Other Benefits.

(c) Termination for Cause. If the Company terminates the Executive's employment with the Company for Cause within 24 months following the Change in Control Date, then the Company shall only pay the Executive such amounts, and provide such benefits, as is required by law.

4.2 Vesting of Equity Incentives. Upon the occurrence of a Change in Control, the Company shall cause all Executive options to purchase Company stock or restricted stock awards (RSUs) in Company stock, which options or RSUs were issued pursuant to the Company's employee equity incentive plans and which options or RSUs are outstanding immediately prior to the Change in Control Date, to become fully vested and exercisable as of the Change in Control Date.

4.3 Mitigation. The Executive shall not be required to mitigate the amount of any payment or benefits provided for in this Section 4 by seeking other employment or otherwise. Further, the amount of any payment or benefits provided for in this Section 4 shall not be reduced by any compensation earned by the Executive as a result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by the Executive to the Company or otherwise.

4.4 Outplacement Services. In the event the Executive is terminated by the Company (other than for Cause, Disability or Death), or the Executive terminates employment for Good Reason, within 24 months following the Change in Control Date, the Company shall provide outplacement services through one or more outside firms of the Executive's choosing up to an aggregate of $25,000, with such services to extend until the first to occur of (i) 12 months following the termination of Executive's employment, or (ii) the date the Executive secures full time employment.

4.5 Release. As a condition to Executive receiving the benefits under section 4.1(a)(i)(2) and (3), the Executive must first execute and deliver to Company a general release of claims against the Company and its affiliates in a form substantially similar to the general release attached hereto as Exhibit A, and such release, by its terms, has become irrevocable.

5. Limitations on Payment.

5.1 General. Notwithstanding anything in this Agreement to the contrary , in the event it shall be determined that any payment, benefit or distribution by the Company to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise) (a "Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended; and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended, (the "Excise Tax"), then the Company shall cause to be determined, before any amounts of the Payment are paid to Executive, which of the following alternative forms of payment would maximize Executive's after-tax proceeds: (i) payment in full of the entire amount of the Payment (a "Full Payment"), or (ii) payment of only a part of the Payment so that Executive receives that largest Payment possible without being subject to the Excise Tax (a "Reduced Payment"), whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax (all computed at the highest marginal rate, net of the maximum reduction in federal income taxes which could be obtained from a deduction of such state and local taxes), results in Executive's receipt, on an after-tax basis, of the greater amount of the Payment, notwithstanding that all or some portion the Payment may be subject to the Excise Tax. Any Excise Tax due shall be borne solely by the Executive.

5.2 Procedures. All determinations required to be made under this Section 5, and the assumptions to be utilized in arriving at such determination, shall be made by KPMG LLP or such other certified public accounting firm as may be designated by the Executive and reasonably acceptable to the Company (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, the Executive may appoint another nationally recognized accounting firm and reasonably acceptable to the Company to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any determination by the Accounting Firm shall be binding upon the Company and the Executive.

6. Disputes.

6.1 Settlement of Disputes; Arbitration. All claims by the Executive for benefits under this Agreement shall be directed to and determined by the Board of Directors of the Company and shall be in writing. Any denial by the Board of Directors of a claim for benefits under this Agreement shall be delivered to the Executive in writing and shall set forth the specific reasons for the denial and the specific provisions of this Agreement relied upon. The Board of Directors shall afford a reasonable opportunity to the Executive for a review of the decision denying a claim. Any further dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in Salt Lake City, Utah, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction.

6.2 Expenses. The Company agrees to pay as incurred, to the full extent permitted by law, all legal, accounting and other fees and expenses which the Executive may reasonably incur as a result of any claim or contest (regardless of the outcome thereof) by the Company, the Executive or others regarding the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive regarding the amount of any payment or benefits pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Code. This Section 6.2 shall not apply to any claim made by the Executive which is not made in good faith or which is determined by the arbitrator or a court to be frivolous.

6.3 Compensation During a Dispute. If the Change in Control Date occurs during the Term and the Executive's employment with the Company terminates within 24 months following the Change in Control Date, and the right of the Executive to receive any benefits under this Agreement (or the amount or nature of the benefits to which he or she is entitled to receive) are the subject of a dispute between the Company and the Executive, the Company shall continue (a) to pay to the Executive his or her base salary in effect as of the Measurement Date and (b) to provide benefits to the Executive and the Executive's family at least equal to those which would have been provided to them, if the Executive's employment had not been terminated, in accordance with the applicable Benefit Plans in effect on the Measurement Date, until such dispute is resolved either by mutual written agreement of the parties or by an arbitrator's award pursuant to Section 6.1, but in no event more than 12 months after the date of such dispute. Following the resolution of such dispute, the sum of the payments made to the Executive under clause (a) of this Section 6.3 shall be deducted from any cash payment which the Executive is entitled to receive pursuant to Section 4; and if such sum exceeds the amount of the cash payment which the Executive is entitled to receive pursuant to Section 4, the excess of such sum over the amount of such payment shall be repaid (without interest) by the Executive to the Company within 60 days of the resolution of such dispute.

7. Successors.

7.1 Successor to Company. The Company shall require any Acquiring Corporation or any other successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to at least one-third or more of Company's gross assets to expressly assume and agree to perform this Agreement to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain an assumption of this Agreement at or prior to the effectiveness of any succession shall be a breach of this Agreement and shall constitute Good Reason if the Executive elects to terminate employment, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination. As used in this Agreement, "Company" shall mean the Company as defined above and any successor to its business or assets as aforesaid which assumes and agrees to perform this Agreement, by operation of law or otherwise.

7.2 Successor to Executive. This Agreement shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any

amount would still be payable to the Executive or his or her family hereunder if the Executive had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to the executors, personal representatives or administrators of the Executive's estate.

8. Notice. All notices, instructions and other communications given hereunder or in connection herewith shall be in writing. Any such notice, instruction or communication shall be sent either (i) by registered or certified mail, return receipt requested, postage prepaid, or (ii) prepaid via a reputable nationwide overnight courier service, in each case addressed to the Company, at 320 Wakara Way, Salt Lake City, Utah 84108, Attn: General Counsel, and to the Executive at the address for notices indicated below (or to such other address as either the Company or the Executive may have furnished to the other in writing in accordance herewith). Any such notice, instruction or communication shall be deemed to have been delivered five business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent via a reputable nationwide overnight courier service. Either party may give any notice, instruction or other communication hereunder using any other means, but no such notice, instruction or other communication shall be deemed to have been duly delivered unless and until it actually is received by the party for whom it is intended.

9. Miscellaneous.

9.1 Timing for Payment of Benefits. To the extent necessary to avoid taxation under section 409A and the rules and regulations promulgated thereunder, all payments and benefits provided for under the Agreement shall be made six (6) months and a day following the effective date of the Executive's termination of employment from the Company; provided further that any such payment or benefit may be made earlier to the extent permitted and provided for under section 409A of the Code and the rules and regulations promulgated thereunder without triggering any income tax obligations under section 409A.

9.2 Construction. Section 409A and the rules and regulations promulgated thereunder, in general, provide for the taxation of certain payments made following the termination of employment of an employee. Section 409A and the rules and regulations promulgated thereunder provide that payments will not be subject to taxation under section 409A if certain conditions are met. It is the intent of the parties that any payments made to the Executive following a termination of employment are to not be subject to taxation under section 409A. Accordingly, this Agreement shall be construed, interpreted and applied so as to accomplish this intent, and also recognizing that there may be future guidance and interpretation of the application of section 409A and the rules and regulations promulgated thereunder by the Internal Revenue Service or the judicial courts.

9.3 Employment by Subsidiary. For purposes of this Agreement, the Executive's employment with the Company shall not be deemed to have terminated solely as a result of the Executive continuing to be employed by a wholly-owned subsidiary of the Company.

9.4 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

9.5 Injunctive Relief. The Company and the Executive agree that any breach of this Agreement by the Company is likely to cause the Executive substantial and irrevocable damage and therefore, in the event of any such breach, in addition to such other remedies which may be available, the Executive shall have the right to specific performance and injunctive relief.

9.6 Governing Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the internal laws of the State of Utah, without regard to conflicts of law principles.

9.7 Waivers. No waiver by the Executive at any time of any breach of, or compliance with, any provision of this Agreement to be performed by the Company shall be deemed a waiver of that or any other provision at any subsequent time.

9.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but both of which together shall constitute one and the same instrument.

9.9 Tax Withholding. Any payments provided for hereunder shall be paid net of any applicable tax withholding required under federal, state or local law.

9.10 Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto in respect of the subject matter contained herein and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto in respect of the subject matter contained herein; and any prior agreement of the parties hereto in respect of the subject matter contained herein is hereby terminated and cancelled.

9.11 Amendments. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Executive.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

| | |
|---|---|
| MYRIAD GENETICS, INC. | EXECUTIVE |
| By: Mark C. Capone<br>Title: President and CEO | Name: Virginia C. Drosos<br>Address: |

EXHIBIT A

GENERAL RELEASE

1. General Release. In consideration of the payments and benefits to be made under that certain Executive Retention Agreement, dated September 26, 2016 (the "Agreement"), Virginia C. Drosos (the "Executive"), with the intention of binding the Executive and the Executive's heirs, executors, administrators and assigns, does hereby release, remise, acquit and forever discharge Myriad Genetics, Inc. (the "Company") and each of its subsidiaries and affiliates (the "Company Affiliated Group"), their present and former officers, directors, executives, agents, attorneys, employees and employee benefits plans (and the fiduciaries thereof), and the successors, predecessors and assigns of each of the foregoing (collectively, the "Company Released Parties"), of and from any and all claims, actions, causes of action, complaints, charges, demands, rights, damages, debts, sums of money, accounts, financial obligations, suits, expenses, attorneys' fees and liabilities of whatever kind or nature in law, equity or otherwise, whether accrued, absolute, contingent, unliquidated or otherwise and whether now known or unknown, suspected or unsuspected which the Executive, individually or as a member of a class, now has, owns or holds, or has at any time heretofore had, owned or held, against any Company Released Party in any capacity, including, without limitation, any and all claims (i) arising out of or in any way connected with the Executive's service to any member of the Company Affiliated Group (or the predecessors thereof) in any capacity, or the termination of such service in any such capacity, (ii) for severance or vacation benefits, unpaid wages, salary or incentive payments, (iii) for breach of contract, wrongful discharge, impairment of economic opportunity, defamation, intentional infliction of emotional harm or other tort and (iv) for any violation of applicable state and local labor and employment laws (including, without limitation, all laws concerning unlawful and unfair labor and employment practices), any and all claims based on the Executive Retirement Income Security Act of 1974 ("ERISA"), any and all claims arising under the civil rights laws of any federal, state or local jurisdiction, including, without limitation, Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans with Disabilities Act ("ADA"), Sections 503 and 504 of the Rehabilitation Act, the Family and Medical Leave Act, and any and all claims under any whistleblower laws or whistleblower provisions of other laws, excepting only:

(a) rights of the Executive under this General Release and the Agreement;

(b) rights of the Executive relating to equity awards held by the Executive as of his or her Date of Termination (as defined in the Agreement);

(c) the right of the Executive to receive COBRA continuation coverage in accordance with applicable law;

(d) rights to indemnification the Executive may have (i) under applicable corporate law, (ii) under the by-laws or certificate of incorporation of any Company Released Party or (iii) as an insured under any director's and officer's liability insurance policy now or previously in force;

(e) claims (i) for benefits under any health, disability, retirement, deferred compensation, life insurance or other, similar Executive benefit plan or arrangement of the Company Affiliated Group and (ii) for earned but unused vacation pay through the Date of Termination in accordance with applicable Company policy; and

(f) claims for the reimbursement of unreimbursed business expenses incurred prior to the Date of Termination pursuant to applicable Company policy.

2. No Admissions. The Executive acknowledges and agrees that this General Release is not to be construed in any way as an admission of any liability whatsoever by any Company Released Party, any such liability being expressly denied.

3. Application to all Forms of Relief. This General Release applies to any relief no matter how called, including, without limitation, wages, back pay, front pay, compensatory damages, liquidated damages, punitive damages for pain or suffering, costs and attorney's fees and expenses.

4. Specific Waiver. The Executive specifically acknowledges that his or her acceptance of the terms of this General Release is, among other things, a specific waiver of his or her rights, claims and causes of action under Title VII, ADEA, ADA and any state or local law or regulation in respect of discrimination of any kind; provided, however, that nothing herein shall be deemed, nor does anything herein purport, to be a waiver of any right or claim or cause of action which by law the Executive is not permitted to waive.

5. No Complaints or Other Claims. The Executive acknowledges and agrees that he or she has not, with respect to any transaction or state of facts existing prior to the date hereof, filed any complaints, charges or lawsuits against any Company Released Party with any governmental agency, court or tribunal.

6. Conditions of General Release.

(a) Terms and Conditions. From and after the Date of Termination, the Executive shall abide by all the terms and conditions of this General Release and the terms and any conditions set forth in any employment or confidentiality agreements signed by the Executive, which is incorporated herein by reference.

(b) Confidentiality. The Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or any legal process, or as is necessary in connection with any adversarial proceeding against any member of the Company Affiliated Group (in which case the Executive shall cooperate with the Company in obtaining a protective order at the Company's expense against disclosure by a court of competent jurisdiction), communicate, to anyone other than the Company and those designated by the Company or on behalf of the Company in the furtherance of its business, any trade secrets, confidential information, knowledge or data relating to any member of the Company Affiliated Group, obtained by the Executive during the Executive's employment by the Company that is not generally available public knowledge (other than by acts by the Executive in violation of this General Release).

(c) Return of Company Material. The Executive represents that he or she has returned to the Company all Company Material (as defined below). For purposes of this Section 6(c), "Company Material" means any documents, files and other property and information of any kind belonging or relating to (i) any member of the Company Affiliated Group, (ii) the current and former suppliers, creditors, directors, officers, employees, agents and customers of any of them or (iii) the businesses, products, services and operations (including without limitation, business, financial and accounting practices) of any of them, in each case whether tangible or intangible (including, without limitation, credit cards, building and office access cards, keys, computer

equipment, cellular telephones, pagers, electronic devices, hardware, manuals, files, documents, records, software, customer data, research, financial data and information, memoranda, surveys, correspondence, statistics and payroll and other employee data, and any copies, compilations, extracts, excerpts, summaries and other notes thereof or relating thereto), excluding only information (x) that is generally available public knowledge or (y) that relates to the Executive's compensation or Executive benefits.

(d) Cooperation. Following the Termination Date, the Executive shall reasonably cooperate with the Company upon reasonable request of the Board and be reasonably available to the Company with respect to matters arising out of the Executive's services to the Company Affiliated Group.

(e) Nondisparagement. The Executive agrees not to communicate negatively about or otherwise disparage any Company Released Party or the products or businesses of any of them in any way whatsoever.

(f) Nonsolicitation. The Executive agrees that for the period of time beginning on the date hereof and ending on the second anniversary of the Executive's Date of Termination, the Executive shall not, either directly or indirectly, solicit, entice, persuade, induce or otherwise attempt to influence any person who is employed by any member of the Company Affiliated Group to terminate such person's employment by such member of the Company Affiliated Group. The Executive also agrees that for the same period of time he or she shall not assist any person or entity in the recruitment of any person who is employed by any member of the Company Affiliated Group. The Executive's provision of a reference to or in respect of any individual shall not be a violation this Section 6(f).

(g) No Representation. The Executive acknowledges that, other than as set forth in this General Release and the Agreement, (i) no promises have been made to him or her and (ii) in signing this General Release the Executive is not relying upon any statement or representation made by or on behalf of any Company Released Party and each or any of them concerning the merits of any claims or the nature, amount, extent or duration of any damages relating to any claims or the amount of any money, benefits, or compensation due the Executive or claimed by the Executive, or concerning the General Release or concerning any other thing or matter.

(h) Injunctive Relief. In the event of a breach or threatened breach by the Executive of this Section 6, the Executive agrees that the Company shall be entitled to injunctive relief in a court of appropriate jurisdiction to remedy any such breach or threatened breach, the Executive acknowledging that damages would be inadequate or insufficient.

7. Voluntariness. The Executive agrees that he or she is relying solely upon his or her own judgment; that the Executive is over eighteen years of age and is legally competent to sign this General Release; that the Executive is signing this General Release of his or her own free will; that the Executive has read and understood the General Release before signing it; and that the Executive is signing this General Release in exchange for consideration that he or she believes is satisfactory and adequate.

8. Legal Counsel. The Executive acknowledges that he or she has been informed of the right to consult with legal counsel and has been encouraged to do so.

9. Complete Agreement/Severability. This General Release constitutes the complete and final agreement between the parties and supersedes and replaces all prior or contemporaneous

agreements, negotiations, or discussions relating to the subject matter of this General Release. All provisions and portions of this General Release are severable. If any provision or portion of this General Release or the application of any provision or portion of the General Release shall be determined to be invalid or unenforceable to any extent or for any reason, all other provisions and portions of this General Release shall remain in full force and shall continue to be enforceable to the fullest and greatest extent permitted by law.

10. Acceptance. The Executive acknowledges that he or she has been given a period of twenty-one (21) days within which to consider this General Release, unless applicable law requires a longer period, in which case the Executive shall be advised of such longer period and such longer period shall apply. The Executive may accept this General Release at any time within this period of time by signing the General Release and returning it to the Company.

11. Revocability. This General Release shall not become effective or enforceable until seven (7) calendar days after the Executive signs it. The Executive may revoke his or her acceptance of this General Release at any time within that seven (7) calendar day period by sending written notice to the Company. Such notice must be received by the Company within the seven (7) calendar day period in order to be effective and, if so received, would void this General Release for all purposes.

13. Governing Law. Except for issues or matters as to which federal law is applicable, this General Release shall be governed by and construed and enforced in accordance with the laws of the State of Utah without giving effect to the conflicts of law principles thereof.

IN WITNESS WHEREOF, the Executive has executed this General Release as of the date last set forth below.

EXECUTIVE

/s/ Virginia C. Drosos Date: 9/26/16

Name: Virginia C. Drosos

**Exhibit 31.1**

**SARBANES-OXLEY SECTION 302(a) CERTIFICATION**

I, Mark C. Capone, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Myriad Genetics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2016

By: /s/ Mark C. Capone
Mark C. Capone
President and Chief Executive Officer

**Exhibit 31.2**

**SARBANES-OXLEY SECTION 302(a) CERTIFICATION**

I, R. Bryan Riggsbee, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Myriad Genetics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2016

By: /s/ R. Bryan Riggsbee
R. Bryan Riggsbee
Executive Vice President, Chief Financial Officer
(Principal financial and chief accounting officer)

**Exhibit 32.1**

**Certification**
**Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**
**(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of Myriad Genetics, Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The Quarterly Report on Form 10-Q for the quarter ended September 30, 2016 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 2, 2016

By: /s/ Mark C. Capone
Mark C. Capone
President and Chief Executive Officer

Date: November 2, 2016

By: /s/ R. Bryan Riggsbee
R. Bryan Riggsbee
Executive Vice President, Chief Financial Officer