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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **January 4, 2019**

MYND ANALYTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-35527**	**87-0419387**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

26522 La Alameda, Suite 290
Mission Viejo, CA 92691
(Address of principal executive offices)

(949) 420-4400
(Company's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

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

☒ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth Company as defined in Rule 405 of the Securities Act of 1933 (§ 230-405 of this chapter) or Rule 12v-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement

Merger Agreement

On January 4, 2019, MYnd Analytics, Inc., a Delaware corporation (the "Company" or "MYnd"), entered into an Agreement and Plan of Merger (the "Merger Agreement") by and among the Company, the Company's wholly owned subsidiary, Athena Merger Subsidiary, Inc., a Delaware corporation ("Merger Sub"), and Emmaus Life Sciences, Inc., a Delaware corporation ("Emmaus"). Under the terms of the Merger Agreement, pending stockholder approval of the transaction, Merger Sub will merge with and into Emmaus with Emmaus surviving the merger and becoming a wholly-owned subsidiary of MYnd (the "Merger"). Subject to the terms of the Merger Agreement, at the effective time of the Merger, Emmaus stockholders will receive a number of newly issued shares of MYnd common stock determined using the exchange ratio described below in exchange for their shares of Emmaus stock. Following the Merger, stockholders of Emmaus will become the majority owners of MYnd.

The exchange ratio will be determined prior to closing and will cause the MYnd securityholders (including holders of options and warrants) prior to the effective time to collectively own 5.9% of the combined company on a fully diluted basis and Emmaus securityholders (including holders of options, warrants and convertible notes) prior to the effective time to collectively own 94.1% of the combined company on a fully diluted basis. The exchange ratio will reflect any dilution that may result from securities sold by MYnd or Emmaus prior to the closing of the Merger and any changes to the number of outstanding convertible securities of each company. The Merger Agreement provides that if Emmaus converts certain debt obligations into equity within six months of the completion of the Merger, Emmaus will issue additional shares (equal to 5.9% of the shares issued in connection with the debt conversion to third parties) to an existing subsidiary of MYnd which is expected to be spun-off to stockholders of MYnd prior to the effective time of the merger, as described below.

The combined company, led by Emmaus' management team, is expected to be named "Emmaus Life Sciences, Inc." Prior to the closing of the Merger, MYnd will seek shareholder approval to conduct a reverse split of its outstanding shares if necessary to satisfy listing requirements of the Nasdaq Capital Market (the "NasdaqCM"). The combined company is expected to trade on the NasdaqCM under a new ticker symbol. At the closing, the combined company's board of directors is expected to consist of one member from MYnd and up to six members from Emmaus. The Merger has been unanimously approved by the Board of Directors of each company. The transaction is expected to close in the first half of 2019, subject to approvals by the stockholders of MYnd and Emmaus, and other closing conditions, including but not limited to the approval of the continued listing of the combined company's common stock on the NasdaqCM, conversion of MYnd's preferred stock into common stock, satisfaction of certain cash and debt conversion conditions and consummation of the MYnd spin-off described below.

The parties to the Merger Agreement have made representations and warranties to each other as of specific dates for the purpose of allocating risk and not for the purpose of establishing facts. Accordingly, the representations and warranties should not be relied on as characterizations of the actual state of facts.

The Merger Agreement contains certain termination rights for each of MYnd and Emmaus, and further provides that, upon certain terminations of the Merger Agreement, MYnd may be required to pay Emmaus a termination fee of $750,000 and Emmaus may be required to pay MYnd a termination fee of $750,000; provided that if the termination results from the failure to obtain the approval of the continued listing of the combined company's common stock on the NasdaqCM, this fee payable by Emmaus will be $1,600,000. In connection with the termination of the Merger Agreement upon certain circumstances, either party also may be required to pay the other party's third party expenses up to $600,000. The termination of the Merger Agreement will not relieve any party thereto from any liability or damages resulting from or arising out of any fraud or willful or intentional breach of any representation, warranty, covenant, obligation or other provision contained in the Merger Agreement.

The foregoing summary of the Merger Agreement and the transactions contemplated thereunder and any other agreements to be entered into by the parties is qualified in its entirety by reference to the full text of the Merger Agreement, which is attached hereto as Exhibit 2.1 and incorporated herein by reference. You are urged to read the Merger Agreement in its entirety.

Spin-Off

Prior to the closing of the Merger, the Company currently intends, subject to obtaining any required regulatory approvals and the completion of certain tax analyses, to transfer all of its businesses, assets and liabilities not assumed by Emmaus to its existing wholly-owned subsidiary, MYnd Analytics, Inc., a California corporation ("MYnd California"), pursuant to the terms of a Separation Agreement (the "Separation Agreement") entered into on January 4, 2019 by the Company and MYnd California. The Company intends to distribute all shares of MYnd California held by it to the Company's stockholders of record as of a future record date to be determined for said distribution. The Separation Agreement includes the terms of the proposed spin-off and the distribution to the Company's stockholders and includes representations and warranties, covenants and conditions, which will impact the terms of the proposed spin-off and distribution. The proposed spin-off will be subject to conditions and regulatory approvals not entirely under the control of MYnd and the terms of the proposed spin-off, if and when completed, are subject to change.

The foregoing summary of the Separation Agreement and the transactions contemplated thereunder and any other agreements to be entered into by the parties is qualified in its entirety by reference to the full text of the Separation Agreement, which is attached hereto as Exhibit 10.1 and incorporated herein by reference. You are urged to read the Separation Agreement in its entirety.

Voting Agreements.

Concurrently and in connection with the execution of the Merger Agreement, Emmaus' directors and executive officers, who beneficially own approximately 30% of the outstanding shares of Emmaus common stock, entered into a voting agreement in favor of MYnd (the "Emmaus Voting Agreements"), pursuant to which such Emmaus stockholders will agree (solely in their capacities as Emmaus stockholders) to vote their shares of Emmaus common stock in favor of the adoption of the Merger Agreement and against any amendment of Emmaus' certificate of incorporation or bylaws or any other proposal or transaction involving Emmaus, the effect of which amendment or other proposal or transaction is to delay, impair, prevent or nullify the Merger or the transactions contemplated by the Merger Agreement or change in any manner the voting rights of any capital stock of Emmaus.

Concurrently and in connection with the execution of the Merger Agreement, the directors and executive officers and certain of MYnd's stockholders, who beneficially own approximately 33% of the outstanding shares of MYnd voting stock, entered into a voting agreement in favor of Emmaus (the "MYnd Voting Agreements" and with the Emmaus Voting Agreements, the "Voting Agreements"), pursuant to which such MYnd stockholders will agree (solely in their capacities as MYnd stockholders) to vote their shares of MYnd voting stock in favor of the adoption of the Merger Agreement and against any amendment of MYnd's certificate of incorporation or bylaws or any other proposal or transaction involving MYnd, the effect of which amendment or other proposal or transaction is to delay, impair, prevent or nullify the Merger or the transactions contemplated by the Merger Agreement or change in any manner the voting rights of any capital stock of MYnd.

The Voting Agreements shall automatically terminate in the event of the termination of the Merger Agreement for any reason. The signatories thereto may not sell or transfer their shares other than under specified circumstances pursuant to the Voting Agreements.

The foregoing description of each of the Emmaus Voting Agreements and MYnd Voting Agreements does not purport to be complete and is qualified in its entirety by reference to the forms of Voting Agreements, which are filed as Exhibits 10.2 and 10.3 and incorporated herein by reference.

Lock-Up Agreements

Concurrently and in connection with the execution of the Merger Agreement, the directors and executive officers of Emmaus also entered into post-closing lock-up agreements with MYnd (the "Emmaus Lock-up Agreements"). Pursuant to the Emmaus Lock-up Agreements, each such stockholder will be subject to lock-up restrictions on the sale of MYnd common stock acquired in the Merger. Such restrictions will begin at the Effective Time and end 120 days after the Effective Time.

Concurrently and in connection with the execution of the Merger Agreement, the directors and executive officers of MYnd who entered in the MYnd Voting Agreement also entered into post-closing lock-up agreements (the "MYnd Lock-up Agreements"). Pursuant to the MYnd Lock-up Agreements, each such stockholder will be subject to lock-up restrictions on the sale of MYnd common stock owned by them. Such restrictions will begin at the Effective Time and end 90 days after the Effective Time.

The foregoing description of each of the Emmaus Lock-Up Agreements and MYnd Lock-Up Agreements does not purport to be complete and is qualified in its entirety by reference to the forms of Lock-Up Agreements, which are filed as Exhibits 10.4 and 10.5 and incorporated herein by reference.

Item 5.01. Changes in Control of Registrant.

The completion of the Merger, which is described in Item 1.01 of this report and which is incorporated by reference into this Item 5.01, is expected to constitute a change in control of MYnd.

Item 8.01. Other Events.

A copy of the joint press release issued by MYnd and Emmaus on January 7, 2019 to announce the execution of the Merger Agreement is attached to this report as Exhibit 99.1 and is incorporated by reference herein. The information contained on the websites referenced in the press release is not incorporated herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
2.1*	Agreement and Plan of Merger and Reorganization dated as of January 4, 2019, by and among MYnd Analytics, Inc., Athena Merger Subsidiary, Inc. and Emmaus Life Sciences, Inc.
10.1*	Separation Agreement dated as of January 4, 2019, by and among MYnd Analytics, Inc., a Delaware corporation and its wholly-owned subsidiary, MYnd Analytics, Inc., a California corporation
10.2	Form of Emmaus Voting Agreement dated as of January 4, 2019
10.3	Form of MYnd Voting Agreement dated as of January 4, 2019
10.4	Form of Emmaus Lock-Up Agreement dated as of January 4, 2019
10.5	Form of MYnd Lock-Up Agreement dated as of January 4, 2019
99.1	Joint News Release issued by MYnd and Emmaus on January 7, 2019
99.2	Certain Pro Forma Financial Information

* Exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. MYnd Analytics will furnish the omitted exhibits and schedules to the SEC upon request by the SEC.

IMPORTANT INFORMATION ABOUT THE TRANSACTIONS WILL BE FILED WITH THE SEC

This communication is being made in respect of the proposed business combination involving MYnd and Emmaus. In connection with the proposed transaction, MYnd and Emmaus plan to file documents with the SEC, including the filing by MYnd of a Registration Statement on Form S-4 containing a Joint Proxy Statement/Prospectus and each of MYnd and Emmaus plan to file with the SEC other documents regarding the proposed transactions. INVESTORS AND SECURITY HOLDERS OF MYND AND EMMAUS ARE URGED TO CAREFULLY READ THE JOINT PROXY STATEMENT/PROSPECTUS (WHEN AVAILABLE) AND OTHER DOCUMENTS FILED WITH THE SEC BY MYND AND EMMAUS BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTIONS. Investors and security holders may view these documents (when they are available) and other documents filed with the SEC at the SEC's web site at www.sec.gov and by contacting MYnd Investor Relations at mynd@crescendo-ir.com. Investors and security holders may view the documents filed with the SEC on MYnd's website at www.myndanalytics.com or through the SEC's website at www.sec.gov. Investors and security holders are urged to read the Joint Proxy Statement/ Prospectus and other documents filed with the SEC before making any voting or investment decision in connection with the proposed transactions.

PARTICIPANTS IN THE SOLICITATION

MYnd, Emmaus and their respective directors and executive officers may be deemed participants in the solicitation of proxies with respect to the proposed transaction. Information regarding the interests of these directors and executive officers in the proposed transaction will be included in the Joint Proxy Statement/Prospectus described above. Additional information regarding the directors and executive officers of MYnd is also included in MYnd's proxy statement for its 2018 Annual Meeting of Shareholders, which was filed with the SEC on March 1, 2018, as updated in MYnd's Annual Report on Form 10-K for the fiscal year ended September 30, 2018, and additional information regarding the directors and executive officers of Emmaus is also included in Emmaus' proxy statement for its 2018 Annual Meeting of Stockholders, which was filed with the SEC on August 23, 2018. Additional information regarding the interests of those participants and other persons who may be deemed participants in the transaction may be obtained by reading the Joint Proxy Statement/Prospectus regarding the proposed transaction when it becomes available.

NO OFFERS OR SOLICITATIONS

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements in this communication, including statements relating to the Merger Agreement, the Merger and the other transactions contemplated by the Merger Agreement and the combined company's future financial condition performance and operating results, strategy and plans are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 giving MYnd's and Emmaus' expectations or predictions of future financial or business performance or conditions. These forward-looking statements are subject to numerous assumptions, risks and uncertainties which change over time. Forward-looking statements speak only as of the date they are made and MYnd and Emmaus assume no duty to update forward-looking statements.

In addition to factors previously disclosed in MYnd's and Emmaus' reports filed with the U.S. Securities and Exchange Commission (the "SEC") and those identified elsewhere in this communication, the following factors, among others, could cause actual results to differ materially from forward-looking statements and historical performance: the ability to NasdaqCM listing approval and meet other closing conditions to the Merger, including requisite approval by MYnd's and Emmaus' stockholders on a timely basis or at all; delay in closing the Merger; the ability to effect the proposed spin-off; adverse tax consequences to shareholders of the proposed spin-off; disruption following the Merger; the availability and access, in general, of funds to fund operations and necessary capital expenditures.

Other risks and uncertainties are more fully described in MYnd' Annual Report on Form 10-K for the fiscal year ended September 30, 2018, and Emmaus' Annual Report on Form 10-K for the year ended December 31, 2017, each filed with the SEC, and in other filings that MYnd or Emmaus makes and will make with the SEC in connection with the proposed transactions, including the Joint Proxy Statement/Prospectus described herein under "Important Additional Information About the Transaction Will be Filed with the SEC." Existing and prospective investors are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The statements made in this Current Report on Form 8-K and the exhibits attached hereto speak only as of the date stated herein, and subsequent events and developments may cause MYnd's or Emmaus' expectations and beliefs to change. While MYnd or Emmaus may elect to update these forward-looking statements publicly at some point in the future, each of MYnd and Emmaus specifically disclaims any obligation to do so, whether as a result of new information, future events or otherwise, except as required by law. These forward-looking statements should not be relied upon as representing MYnd's or Emmaus' views as of any date after the date stated herein.

SIGNATURES

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

MYND ANALYTICS, INC.

January 7, 2019

By: /s/ Donald D'Ambrosio
Name: Donald D'Ambrosio
Title: Chief Financial Officer

Exhibit 2.1

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

by and among

MYND ANALYTICS, INC.,

ATHENA MERGER SUBSIDIARY INC.,

AND

EMMAUS LIFE SCIENCES, INC.,

Dated as of January 4, 2019

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AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

THIS AGREEMENT AND PLAN OF MERGER AND REORGANIZATION (this "***Agreement***") is made and entered into as of January 4, 2019, by and among MYND ANALYTICS, INC., a Delaware corporation ("***Parent***"), ATHENA MERGER SUBSIDIARY INC., a Delaware corporation and a direct wholly owned subsidiary of Parent ("***Merger Sub***"), and EMMAUS LIFE SCIENCES, INC., a Delaware corporation (the "***Company***"). Certain capitalized terms used in this Agreement are defined in Section 8.14.

RECITALS

WHEREAS, Parent and the Company intend to merge Merger Sub with and into the Company, with the Company as the surviving corporation in the merger (the "***Merger***"), in accordance with this Agreement and the DGCL;

WHEREAS, pursuant to the terms and conditions of this Agreement, the holders of the outstanding equity of the Company immediately prior to the Effective Time will own 94.1% of the outstanding equity of Parent immediately following the Effective Time and the holders of the outstanding equity of Parent immediately prior to the Effective Time will own 5.9% of the outstanding equity of Parent immediately following the Effective Time;

WHEREAS, the Board of Directors of Parent has unanimously (a) determined that the Merger and this Agreement are advisable and in the best interests of Parent and its stockholders, (b) approved this Agreement, the Merger, the issuance of shares of Parent Common Stock to the Company Stockholders pursuant to the terms of this Agreement, and the other actions contemplated by this Agreement, and (c) determined to recommend that the stockholders of Parent vote to approve the issuance of shares of Parent Common Stock to the Company Stockholders pursuant to the terms of this Agreement and such other actions as contemplated by this Agreement including the Parent Stockholder Proposals;

WHEREAS, the Board of Directors of Merger Sub has unanimously (a) determined that the Merger and this Agreement are advisable and in the best interests of Merger Sub and its sole stockholder, (b) approved this Agreement, the Merger, and the other actions contemplated by this Agreement, and (c) determined to recommend that Parent, as the sole stockholder of Merger Sub, vote to approve this Agreement, the Merger and such other actions as contemplated by this Agreement and Parent has so approved this Agreement and the Merger;

WHEREAS, the Board of Directors of the Company has unanimously (a) determined that the Merger and this Agreement are advisable and in the best interests of the Company and its stockholders, (b) approved this Agreement, the Merger and the other actions contemplated by this Agreement, and (c) determined to recommend that the Company Stockholders vote to approve this Agreement, the Merger and such other actions as contemplated by this Agreement;

WHEREAS, in order to induce the Company to enter into this Agreement and to cause the Merger to be consummated, the stockholders of Parent listed on Schedule I hereto, are executing voting agreements in favor of the Company concurrently with the execution and delivery of this Agreement in the form substantially attached hereto as Exhibit A-1 (the "***Parent Voting Agreements***");

WHEREAS, in order to induce the Company to enter into this Agreement and to cause the Merger to be consummated, certain of Parent's officers, directors and Parent Stockholders are executing lock-up agreements in favor of the Company concurrently with the execution and delivery of this Agreement in the form substantially attached hereto as Exhibit A-2 (the "***Parent Lock-up Agreements***");

WHEREAS, in order to induce Parent and Merger Sub to enter into this Agreement and to cause the Merger to be consummated, the stockholders of the Company listed on Schedule II hereto, are executing voting agreements in favor of the Company concurrently with the execution and delivery of this Agreement in the form substantially attached hereto as Exhibit B-1 (the "***Company Voting Agreements***");

WHEREAS, in order to induce Parent and Merger Sub to enter into this Agreement and to cause the Merger to be consummated, certain of the Company's officers, directors and Company Stockholders are executing lock-up agreements in favor of Parent concurrently with the execution and delivery of this Agreement in the form substantially attached hereto as Exhibit B-2 (the "***Company Lock-up Agreements***"); and

WHEREAS, for U.S. federal income tax purposes, Parent, Merger Sub, and the Company intend that the Merger, together with the issuance of shares of Parent Common Stock to the Company Stockholders, will qualify as a "reorganization" within the meaning of Section 368(a) of the Code, that this Agreement will constitute a "plan of reorganization" with the meaning of Treasury Regulations Sections 1.368-1(c), 1.368-2(g) and 1.368-3(a), and that Parent and the Company will each be a "party to the reorganization" within the meaning of Section 368(b) of the Code.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

ARTICLE 1
THE MERGER AND CERTAIN GOVERNANCE MATTERS

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

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

Section 1.3 **Closing; Effective Time**. Unless this Agreement is earlier terminated pursuant to the provisions of Section 7.1 of this Agreement, and subject to the satisfaction or waiver of the conditions set forth in Article 6 of this Agreement, the consummation of the Merger (the "***Closing***") shall take place at the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020-1089, no later than three (3) Business Days following the satisfaction (or waiver by the party entitled to the benefit thereof) of the conditions to the Closing set forth in Article 6 (other than the conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or waiver of each of such conditions), or at such other time, date and place as Parent and the Company may mutually agree in writing. The date on which the Closing actually takes place is referred to as the "***Closing Date***." At the Closing, the Parties shall cause the Merger to be consummated by executing and filing, with the Secretary of State of the State of Delaware, a Certificate of Merger (the "***Certificate of Merger***") with respect to the Merger, satisfying the applicable requirements of the DGCL and in a form reasonably acceptable to Parent and the Company. The Merger shall become effective at the time of the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, or at such later time as may be specified in the Certificate of Merger with the consent of Parent and the Company (the time upon which the Merger becomes effective being referred to as the "***Effective Time***").

Section 1.4 Certificate of Incorporation and Bylaws; Directors and Officers; Name Change At the Effective Time:

(a) the Certificate of Incorporation of Parent shall be amended to cause the name of Parent to be changed to "Emmaus Life Sciences, Inc.," and, as so amended, shall be the Certificate of Incorporation of Parent, until thereafter amended as provided by the DGCL and such Certificate of Incorporation.

(b) the Bylaws of Parent shall be the Bylaws of Parent, until thereafter amended as provided by the DGCL and the Certificate of Incorporation of Parent.

(c) the directors and officers of Parent shall be as provided for inSection 5.13.

(d) the directors and officers of the Company immediately prior to the Effective Time will be the directors and officers of the Surviving Corporation immediately following the Effective Time until such time as their respective successors are duly elected or appointed.

Section 1.5 Conversion of Shares and Notes.

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

(i) any shares of Company Common Stock owned as treasury stock of the Company or owned by Parent or by any direct or indirect wholly owned Subsidiary of Parent immediately prior to the Effective Time shall be automatically canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(ii) subject to Section 1.5(b), each share of Company Common Stock (including all accrued but unpaid dividends thereon) outstanding immediately prior to the Effective Time (excluding shares to be canceled pursuant to Section 1.5(a)(i) and Dissenting Shares), including shares of Company Common Stock issuable upon conversion of Company Convertible Notes pursuant to Section 1.5(a)(iii) shall be automatically converted solely into the right to receive a number of shares of Parent Common Stock equal to the Exchange Ratio;

(iii) to the extent provided for therein, each Company Convertible Note outstanding immediately prior to the Effective Time shall be automatically converted into shares of Company Common Stock issuable upon conversion thereof; and

(iv) except as provided in clause (iii), above, each Company Convertible Note outstanding immediately prior to the Effective Time shall remain outstanding after the Effective Time and convertible into shares of Company Common Stock in accordance with its terms.

(b) If any shares of Company Common Stock outstanding immediately prior to the Effective Time are unvested or are subject to a repurchase option or the risk of forfeiture or under any applicable restricted stock purchase agreement or other agreement with the Company (other than those shares (if any) which, as a result of the Merger, shall, by the terms of the agreements applicable thereto, vest or for which any such repurchase options or other such restrictions or risks of forfeiture shall lapse), then the shares of Parent Common Stock issued in exchange for such shares of Company Common Stock will to the same extent be unvested and subject to the same repurchase option or risk of forfeiture, and the certificates representing such shares of Parent Common Stock shall accordingly be marked with appropriate legends. The Company shall take all action that may be necessary to ensure that, from and after the Effective Time, Parent is entitled to exercise any such repurchase option or other right set forth in any such restricted stock purchase agreement or other agreement in accordance with its terms.

(c) No fractional shares of Parent Common Stock shall be issued in connection with the Merger, and no certificates or scrip for any such fractional shares shall be issued. Any holder of Company Common Stock who would otherwise be entitled to receive a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock issuable to such holder) shall, in lieu of such fraction of a share, and upon surrender by such holder of a letter of transmittal in accordance with Section 1.8 and accompanying documents as required therein, be paid in cash the dollar amount (rounded to the nearest whole cent), without interest, determined by multiplying such fraction by the average closing price of a share of Parent Common Stock on NASDAQ for the ten (10) consecutive trading days ending with the second (2nd) to last trading day immediately prior to the Effective Time.

(d) Each share of common stock, $0.0001 par value per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be automatically converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock, $0.0001 par value per share, of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of any such shares shall, as of the Effective Time, evidence ownership of such shares of common stock of the Surviving Corporation.

(e) If, between the date of this Agreement and the Effective Time, the outstanding shares of Company Capital Stock or Parent Capital Stock shall have been changed into, or exchanged for, a different number of shares or a different class, by reason of any Permitted Parent Reorganization, any Permitted Company Reorganization, any Permitted Parent Issuance, stock dividend, subdivision, reorganization, reclassification, recapitalization, split, reverse split (excluding the Reverse Stock Split which shall be effective immediately prior to the Effective Time), combination or exchange of shares or other like change (including any dividend or distribution of securities convertible into shares of Company Capital Stock or Parent Capital Stock), the Exchange Ratio, to the extent necessary, shall be correspondingly adjusted to provide the holders of Company Common Stock, Company Stock Options, Company Warrants and Company Convertible Notes the same economic effect as contemplated by this Agreement prior to such event.

(f) Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of the Company Warrants and Company Convertible Notes converted in accordance with this Section 1.6.

Section 1.6 Company Stock Options and Company Warrants.

(a) At the Effective Time, each Company Stock Option that is outstanding and unexercised immediately prior to the Effective Time, whether vested or unvested, will be converted into and become an option to purchase Parent Common Stock, and the Company Stock Option Plan shall be assumed by Parent. All rights with respect to the Company Common Stock under each Company Stock Option assumed by Parent shall thereupon be converted into rights with respect to Parent Common Stock. Accordingly, from and after the Effective Time: (i) each Company Stock Option assumed by Parent may be exercised solely for shares of Parent Common Stock, (ii) the number of shares of Parent Common Stock subject to each Company Stock Option assumed by Parent shall be determined by multiplying (x) the number of shares of Company Common Stock that were subject to such Company Stock Option, as in effect immediately prior to the Effective Time, by (y) the Exchange Ratio, with the resulting number rounded down to the nearest whole number of shares of Parent Common Stock, (iii) the exercise price per share for the Parent Common Stock issuable upon exercise of each assumed Company Stock Option will equal the quotient obtained from dividing (x) the exercise price per share for the Company Common Stock purchasable pursuant to the assumed Company Stock Option immediately prior to the Effective Time by (y) the Exchange Ratio, with the resulting exercise price rounded up to the nearest whole cent, and (iv) any restriction on the exercise of any assumed Company Stock Option shall continue in full force and effect and the term, exercisability, vesting schedule, status as an "incentive stock option" under Section 422 of the Code, if applicable, and other provisions of such Company Stock Option will otherwise remain unchanged; provided, however, that: (1) to the extent provided under the terms of a Company Stock Option, such Company Stock Option assumed by Parent in accordance with this Section 1.6(a) will, in accordance with its terms, be subject to further adjustment as appropriate to reflect any stock split, division or subdivision of shares, stock dividend, reverse stock split, consolidation of shares, reclassification, recapitalization or other similar transaction with respect to Parent Common Stock subsequent to the Effective Time, (2) Parent's Board of Directors or an authorized committee thereof will succeed to the authority and responsibility of the Company's Board of Directors or any authorized committee thereof with respect to each Company Stock Option assumed by Parent, and (3) all references in the Company Stock Option Plan and applicable award agreements to the Company shall be deemed to mean Parent. Notwithstanding anything to the contrary in this Section 1.6(a), the conversion of each Company Stock Option (regardless of whether such option qualifies as an "incentive stock option" within the meaning of Section 422 of the Code) into an option to purchase shares of Parent Common Stock will be made in a manner consistent with Treasury Regulation Section 1.424-1, such that the conversion of a Company Stock Option will not constitute a "modification" of such Company Stock Option for purposes of Section 409A or Section 424 of the Code. It is the intention of the parties that each Company Stock Option so assumed by Parent shall qualify following the Effective Time as an incentive stock option as defined in Section 422 of the Code to the extent permitted under Section 422 of the Code and to the extent such Company Stock Option qualified as an incentive stock option prior to the Effective Time.

(b) At the Effective Time, each Company Warrant that is outstanding and unexercised immediately prior to the Effective Time, whether vested or unvested, will be converted into and become a warrant to purchase Parent Common Stock, and the Company Warrant shall be assumed by Parent. All rights with respect to the Company Common Stock under each Company Warrant assumed by Parent shall thereupon be converted into rights with respect to Parent Common Stock. Accordingly, from and after the Effective Time: (i) each Company Warrant assumed by Parent may be exercised solely for shares of Parent Common Stock, (ii) the number of shares of Parent Common Stock subject to each Company Warrant assumed by Parent shall be determined by multiplying (x) the number of shares of Company Common Stock that were subject to such Company Warrant, as in effect immediately prior to the Effective Time, by (y) the Exchange Ratio, with the resulting number rounded down to the nearest whole number of shares of Parent Common Stock, (iii) the exercise price per share for the Parent Common Stock issuable upon exercise of each assumed Company Warrant will equal the quotient obtained from dividing (x) the exercise price per share for the Company Common Stock purchasable pursuant to the assumed Company Warrant immediately prior to the Effective Time by (y) the Exchange Ratio, with the resulting exercise price rounded up to the nearest whole cent, and (iv) any restriction on the exercise of any assumed Company Warrant shall continue in full force and effect and the term, exercisability, and other provisions of such Company Warrant will otherwise remain unchanged; provided, however, that, to the extent provided under the terms of a Company Warrant, such Company Warrant assumed by Parent in accordance with this Section 1.6(b) will, in accordance with its terms, be subject to further adjustment as appropriate to reflect any stock split, division or subdivision of shares, stock dividend, reverse stock split, consolidation of shares, reclassification, recapitalization or other similar transaction with respect to Parent Common Stock subsequent to the Effective Time. Except as provided above in this Section 1.6(b), each Company Warrant outstanding immediately prior to the Effective Time shall remain outstanding after the Effective Time and exercisable for shares of Company Common Stock in accordance with its terms.

(c) As soon as practicable after the Effective Time, subject to Section 1.6(a), Parent shall deliver to the former holders of the Company Stock Options and Company Warrants an appropriate notice evidencing the foregoing assumption setting forth the specific adjustments made to the assumed Company Stock Options and Company Warrants, as provided in this Section 1.6.

(d) Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of the Company Stock Options and Company Warrants assumed in accordance with this Section 1.6. As soon as practicable (but in no event more than ten (10) business days after the Effective Time), Parent shall file a registration statement on Form S-8 (or any successor form) with respect to the shares of Parent Common Stock subject to such assumed Company Stock Options, and thereafter shall use commercially reasonable efforts to maintain the effectiveness of that registration statement for as long as any such assumed Company Stock Options remain outstanding.

Section 1.7 Closing of the Company's Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed with respect to all shares of Company Common Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of Company Common Stock shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a valid certificate previously representing any shares of Company Common Stock outstanding immediately prior to the Effective Time (a "***Company Stock Certificate***") is presented to Parent, the Surviving Corporation or the Exchange Agent, such Company Stock Certificate shall be canceled and shall be exchanged as provided in Section 1.5 and Section 1.8.

Section 1.8 Surrender of Certificates.

(a) Exchange Agent. At the Effective Time, Parent shall deposit with the Exchange Agent, for the benefit of the holders of certificates formerly representing the Company Common Stock ("***Certificates***"), certificates or book-entry shares representing shares of Parent Common Stock and holders of Company Convertible Notes described in Section 1.5(a)(iii) ("***Converted Notes***") in the aggregate amount equal to the Merger Shares. In addition, Parent shall deposit with the Exchange Agent, as necessary from time to time after the Effective Time, any dividends or other distributions payable pursuant to Section 1.8(c). All shares of Parent Common Stock, cash, dividends and distributions deposited with the Exchange Agent pursuant to this Section 1.8(a) shall hereinafter be referred to as the "***Exchange Fund***." The Exchange Fund shall not be used for any other purpose.

(b) Exchange Procedures. As soon as reasonably practicable after the Effective Time (and in any event within five Business Days), Parent shall cause the Exchange Agent to mail to each holder of record of a Certificate or Converted Note (i) a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificate or Converted Note shall pass, only upon proper delivery of the Certificate or Converted Note to the Exchange Agent and which shall be in customary form and contain customary provisions), and (ii) instructions for use in effecting the surrender of the Certificate or Converted Note in exchange for the Merger Shares, any dividends or other distributions payable pursuant to Section 1.8(c). Each holder of record of one or more Certificates or Converted Notes shall, upon surrender to the Exchange Agent of such Certificate or Converted Note, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, be entitled to receive promptly in exchange therefor (i) a certificate or certificates or book-entry shares representing that number of whole shares of Parent Common Stock (after taking into account all Certificates and Converted Notes surrendered by such holder) to which such holder is entitled pursuant to Section 1.8(a), and (ii) any dividends or distributions payable pursuant to Section 1.8(c), and the Certificate or Converted Note so surrendered shall forthwith be canceled. In the event of a transfer of ownership of the Company Common Stock or Converted Note that is not registered in the transfer records of the Company, payment of the Merger Shares in accordance with Section 1.8(a) may be made to a person other than the person in whose name the Certificate or Converted Note so surrendered is registered if such Certificate or Converted Note shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such payment shall pay any transfer or other similar Taxes required by reason of the transfer or establish to the reasonable satisfaction of Parent that such Taxes have been paid or are not applicable. Until surrendered as contemplated by this Section 1.8(b), each Certificate and Converted Note shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Shares and any dividends or other distributions payable pursuant to Section 1.8(c). No interest shall be paid or will accrue on any payment to holders of Certificates or Converted Notes pursuant to the provisions of this Article 1.

(c) Distributions with Respect to Unexchanged Shares. No dividends or other distributions with respect to Parent Common Stock with a record date on or after the Effective Time shall be paid to the holder of any unsurrendered Certificate or Converted Note with respect to the shares of Parent Common Stock that the holder thereof has the right to receive upon the surrender thereof, until the holder of such Certificate or Converted Note shall have surrendered such Certificate or Converted Note in accordance with this Article 1. Following the surrender of any Certificate or Converted Note, there shall be paid to the record holder of the certificate representing whole shares of Parent Common Stock issued in exchange therefor, without interest, (i) at the time of such surrender, the amount of dividends or other distributions with a record date on or after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock, and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date on or after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(d) No Further Ownership Rights in the Company Common Stock. The Merger Shares and any dividends or other distributions as are payable pursuant to Section 1.8(c) upon the surrender of Certificates and Converted Notes in accordance with the terms of this Article 1 shall be deemed to have been in full satisfaction of all rights pertaining to the Company Common Stock formerly represented by such Certificates, subject, however, to the Surviving Corporation's obligation to pay any dividends or make any other distributions with a record date prior to the Effective Time which may have been declared or made by the Company on the Company Common Stock in accordance with the terms of this Agreement prior to the Effective Time.

(e) Termination of the Exchange Fund. Any portion of the Exchange Fund that remains undistributed to the holders of the Certificates or Converted Notes one year after the Effective Time shall be delivered to Parent, upon demand, and any holders of the Certificates or Converted Notes who have not theretofore complied with this Article 1 shall thereafter look only to Parent for, and Parent shall remain liable for, payment of their claim for the Merger Shares and any dividends or other distributions payable pursuant to Section 1.8(c) in accordance with this Article 1.

(f) No Liability. None of Parent, Merger Sub, the Company, the Surviving Corporation or the Exchange Agent shall be liable to any person in respect of any shares of Parent Common Stock, cash, dividends or other distributions from the Exchange Fund properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(g) Lost Certificates. If any Certificate or Converted Note shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate or Converted Note to be lost, stolen or destroyed (and without the requirement to post or deliver any bond), the Exchange Agent shall deliver in exchange for such lost, stolen or destroyed Certificate or Converted Note the Merger Shares, any dividends or other distributions payable pursuant to Section 1.8(c) pursuant to this Article 1.

(h) Withholding Rights. Parent, the Surviving Corporation or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as Parent, the Surviving Corporation or the Exchange Agent are required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or non-U.S. Tax Law and shall be entitled to request any reasonably appropriate Tax forms, including an IRS Form W-9 (or the appropriate IRS Form W-8, as applicable), from any recipient of payments hereunder; provided that the Parties shall cooperate and undertake commercially reasonable efforts to minimize or avoid withholding, and the applicable withholding agent shall use best efforts to provide written notice (to the applicable Party) of any intention to withhold (or determination that the Exchange Agent may withhold) (other than any such withholding that is imposed on consideration that is properly treated as compensation for applicable income, employment and/or payroll Tax purposes) at least five (5) Business Days before the making of such payment. To the extent that amounts are so withheld by Parent, the Surviving Corporation or the Exchange Agent, such withheld amounts (i) subject to (ii), shall be treated for all purposes of this Agreement as having been paid to the holder of Certificates in respect of which such deduction and withholding was made by Parent, the Surviving Corporation or the Exchange Agent, and (ii) shall be remitted by Parent, the Surviving Corporation or the Exchange Agent, as the case may be, to the applicable Governmental Authority. Any amounts payable hereunder that require employment Tax withholding shall be paid through the Company's payroll.

Section 1.9 Appraisal Rights.

(a) Notwithstanding any provision of this Agreement to the contrary, shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time and which are owned by stockholders who have validly exercised appraisal rights or dissenters' rights for such shares of Company Capital Stock in accordance with the DGCL (collectively, the "***Dissenting Shares***") shall not be converted into or represent the right to receive the per share amount of the Merger Shares described in Section 1.5 attributable to such Dissenting Shares. Such stockholders shall be entitled to receive payment of the appraised value of such shares of Company Capital Stock owned by them in accordance with the DGCL, unless and until such stockholders fail to perfect or effectively withdraw or otherwise lose their appraisal rights under the DGCL. All Dissenting Shares owned by stockholders who shall have failed to perfect or who effectively shall have withdrawn or lost their right to appraisal of such shares of Company Capital Stock under the DGCL shall thereupon be deemed to be converted into and to have become exchangeable for, as of the Effective Time, the right to receive the per share amount of the Merger Shares attributable to such Dissenting Shares, upon their surrender in the manner provided in Section 1.8.

(b) The Company shall give Parent prompt written notice of any demands by dissenting stockholders received by the Company, withdrawals of such demands and any other instruments served on the Company and any material correspondence received by the Company in connection with such demands and Parent shall have the right to participate in all negotiations and proceedings with respect to such demands. Except with the prior written consent of Parent, or to the extent required by applicable law, the Company shall not make any payment with respect to, or offer to settle or settle, any such demands.

Section 1.10 Further Action. If, at any time after the Effective Time, any further action is determined by the Surviving Corporation to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full right, title and possession of and to all rights and property of the Company, then the officers and directors of the Surviving Corporation shall be fully authorized, and shall use their commercially reasonable efforts (in the name of the Company, in the name of Merger Sub, and otherwise) to take such action.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Merger Sub as follows, except as set forth in (x) the Company SEC Reports filed after January 1, 2015 and prior to the date hereof (other than any disclosures contained or referenced therein under the captions "Risk Factors," "Forward-Looking Statements," "Quantitative and Qualitative Disclosures About Market Risk" and any other disclosures contained or referenced therein of information, factors or risks that are cautionary, predictive or forward-looking in nature), or (y) the written disclosure schedule delivered by the Company to Parent (the "***Company Disclosure Schedule***"). The Company Disclosure Schedule shall be arranged in parts and subparts corresponding to the numbered and lettered Sections and subsections contained in this Article 2. The disclosures in any part or subpart of the Company Disclosure Schedule shall qualify other Sections and subsections in this Article 2 to the extent it is reasonably apparent from the face of the disclosure that such disclosure is applicable to such other Sections and subsections.

Section 2.1 Organization.

(a) The Company is a corporation validly existing and in good corporate standing under the Laws of the State of Delaware. The Company has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted. The Company is duly licensed or qualified to do business and is in corporate good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased, or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in corporate good standing would not, either individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. The Company Charter and the Company Bylaws, copies of which have previously been made available to Parent, are true, correct and complete copies of such documents as currently in effect and the Company is not in violation of any provision thereof. Other than the Company Charter and the Company Bylaws, the Company is not a party to or bound by or subject to any stockholder agreement or other similar agreement governing the voting or transfer of the Company Capital Stock and is not subject to a stockholder rights plan.

(b) Each Subsidiary of the Company is a corporation or legal entity, validly existing and, if applicable, in good standing under the Laws of the jurisdiction of its organization. Each Subsidiary of the Company has all requisite corporate power or other power and authority to own, lease and operate all of its properties and assets and to carry on its business as it is now being conducted. Each Subsidiary of the Company is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased, or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in good standing would not, either individually or in the aggregate, reasonably be expected to have a the Company Material Adverse Effect. The certificate of incorporation and bylaws or equivalent organizational documents of each of the Company's Subsidiaries, copies of which have previously been made available to the Company, are true, correct and complete copies of such documents as currently in effect and such Subsidiaries of the Company are not in violation of any provision thereof.

Section 2.2 Capitalization.

(a) The authorized capital stock of the Company consists of 100,000,000 shares of Company Common Stock and 20,000,000 shares Company Preferred Stock. As of December 31, 2018, there were 35,558,305 shares of Company Common Stock issued and outstanding and there are no shares of Company Preferred Stock issued and outstanding. As of the date hereof, there are no shares of Company Common Stock and no shares of Company Preferred Stock held in the treasury of the Company. The Company has no shares of Company Common Stock or Company Preferred Stock reserved for issuance other than as described herein or in the Company SEC Reports or the Company Disclosure Schedule. The outstanding shares of Company Common Stock have been duly authorized and are validly issued, fully paid and nonassessable, and were not issued in violation of the material terms of any agreement binding upon the Company at the time at which they were issued and were issued in compliance with the Company Charter and Company Bylaws and all applicable securities Laws.

(b) Except for the Company Stock Option Plan, the Company Stock Options, the Company Warrants, the Company Convertible Notes, or as set forth in Section 2.2(b) of the Company Disclosure Schedule, the Company does not have and is not bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements, or agreements of any character calling for the Company to issue, deliver, or sell, or cause to be issued, delivered, or sold any shares of Company Common Stock or any other equity security of the Company or any Subsidiary of the Company or any securities convertible into, exchangeable for, or representing the right to subscribe for, purchase, or otherwise receive any shares of Company Common Stock or any other equity security of the Company or any Subsidiary of the Company or obligating the Company or any Subsidiary of the Company to grant, extend, or enter into any such subscriptions, options, warrants, calls, commitments, rights agreements, or any other similar agreements. Except as set forth in Section 2.2(b) of the Company Disclosure Schedule, there are no registration rights, repurchase or redemption rights, anti-dilutive rights, voting agreements, voting trusts, preemptive rights or restrictions on transfer relating to any capital stock of the Company.

(c) As of the December 31, 2018, there were 6,642,200 shares of Company Common Stock issuable upon exercise of all outstanding Company Stock Options, subject to adjustment on the terms set forth in the Company Stock Option Plan. Section 2.2(c) of the Company Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of (i) the name of the holder of each Company Stock Option, (ii) the date each Company Stock Option was granted, (iii) the number, issuer and type of securities subject to each such Company Stock Option, (iv) the expiration date of each such Company Stock Option, (v) the vesting schedule of each such Company Stock Option, (vi) the price at which each such Company Stock Option (or each component thereof, if applicable) may be exercised, (vii) the number of shares of Company Common Stock issuable upon the exercise of such, or upon the conversion of all securities issuable upon the exercise of such, Company Stock Options, and (viii) whether and to what extent the exercisability of each Company Stock Option will be accelerated upon consummation of the Contemplated Transactions or any termination of employment thereafter.

(d) As of December 31, 2018, there were 3,436,431 shares of Company Common Stock issuable upon exercise of all outstanding Company Warrants, subject to adjustment on the terms set forth in the Company Warrants. Section 2.2(d) of the Company Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of (i) the name of the holder of each Company Warrant, (ii) the date each Company Warrant was issued, (iii) the number, issuer and type of securities subject to each such Company Warrant, (iv) the expiration date of each such Company Warrant, (v) the price at which each such Company Warrant (or each component thereof, if applicable) may be exercised, and (vi) the number of shares of Company Common Stock issuable upon the exercise of such, or upon the conversion of all securities issuable upon the exercise of such, Company Warrants.

(e) As of December 31, 2018, there were 6,500,061 shares of Company Common Stock issuable upon conversion of all outstanding Company Convertible Notes, subject to adjustment on the terms set forth in the Company Convertible Notes. Section 2.2(e) of the Company Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of (i) the name of the holder of each Company Convertible Note, (ii) the date each Company Convertible Note was issued, (iii) the number, issuer and type of securities subject to each such Company Convertible Note, (iv) the expiration date of each such Company Convertible Note, (v) the price at which each such Company Convertible Note (or each component thereof, if applicable) may be converted, and (vi) the number of shares of Company Common Stock issuable upon the exercise of such, or upon the conversion of all securities issuable upon the exercise of such, Company Convertible Notes.

(f) Section 2.2(f) of the Company Disclosure Schedule lists each Subsidiary of the Company as of the date hereof and indicates for each such Subsidiary as of such date (i) the percentage and type of equity securities owned or controlled, directly or indirectly, by the Company, and (ii) the jurisdiction of incorporation or organization. No Subsidiary of the Company has or is bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements, or agreements of any character calling for it to issue, deliver, or sell, or cause to be issued, delivered, or sold any of its equity securities or any securities convertible into, exchangeable for, or representing the right to subscribe for, purchase or otherwise receive any such equity security or obligating such Subsidiary to grant, extend or enter into any such subscriptions, options, warrants, calls, commitments, rights agreements, or other similar agreements. There are no outstanding contractual obligations of any Subsidiary of the Company to repurchase, redeem, or otherwise acquire any of its capital stock or other equity interests. All of the shares of capital stock of each of the Subsidiaries of the Company (A) have been duly authorized and are validly issued, fully paid (to the extent required under the applicable governing documents) and nonassessable, and (B) are owned by the Company free and clear of any Encumbrance (other than Permitted Encumbrances), or agreement with respect thereto.

Section 2.3 Authority. The Company has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the Contemplated Transactions and perform its respective obligations hereunder, subject only to obtaining the Company Stockholder Approval. The adoption, execution, delivery and performance of this Agreement and the approval of the consummation of the Contemplated Transactions have been duly and validly adopted and approved by the Board of Directors of the Company by unanimous vote of the directors participating in such votes. No other approval or consent of, or action by, the holders of the outstanding securities of the Company, other than the Company Stockholder Approval, is required in order for the Company to execute and deliver this Agreement and to consummate the Contemplated Transactions and perform its obligations hereunder. The Board of Directors of the Company has declared this Agreement advisable, has directed that this Agreement be submitted to the Company Stockholders for adoption and approval and has recommended that the Company Stockholders adopt and approve this Agreement. Except for the Company Stockholder Approval and the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, no other corporate proceeding on the part of the Company is necessary to authorize the adoption, execution, delivery and performance of this Agreement or to consummate the Merger and the other Contemplated Transactions. This Agreement has been duly and validly executed and delivered by the Company, and (assuming due authorization, execution and delivery by the other parties hereto), constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

Section 2.4 Non-Contravention; Consents.

(a) Except as set forth in Section 2.4(a) of the Company Disclosure Schedule, the execution and delivery of this Agreement by the Company does not, and the consummation by the Company of the Contemplated Transactions will not, (i) conflict with, or result in any violation or breach of, any provision of the Company Charter or the Company Bylaws or of the charter, bylaws, or other organizational document of any Subsidiary of the Company, (ii) conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, constitute a change in control under, require the payment of a penalty under or result in the imposition of any Encumbrance on the Company's or any of its Subsidiaries' assets under, any of the terms, conditions or provisions of any Company Material Contract, or (iii) subject to obtaining the Company Stockholder Approval and subject to the consents, approvals and authorizations specified in clauses (i) through (v) of Section 2.4(b) having been obtained prior to the Effective Time and all filings and notifications described in Section 2.4(b) having been made, conflict with or violate any Law applicable to the Company or any of its Subsidiaries or any of its or their properties or assets, except in the case of clauses (ii), and (iii) of this Section 2.4(a) for any such conflicts or violations, breaches, rights of termination, Encumbrances, penalties, defaults, terminations, cancellations, accelerations, losses, changes of control, or payments, that have not had, and would not reasonably be expected to result in, a Company Material Adverse Effect.

(b) No consent, approval, license, permit, order or authorization of, or registration, declaration, notice or filing with, any Governmental Authority is required by or with respect to the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the Contemplated Transactions, except for (i) obtaining the Company Stockholder Approval, (ii) the filing of the Certificate of Merger with the Delaware Secretary of State and appropriate corresponding documents with the appropriate authorities of other states in which the Company is qualified as a foreign corporation to transact business, (iii) any filings required to be made with the SEC in connection with this Agreement and the Contemplated Transactions (including (A) the filing of the Form S-4 Registration Statement and the Joint Proxy Statement/Prospectus with the SEC in accordance with the Securities Act and the Exchange Act, respectively, and (B) the filing of a Form D Notice of Exempt Offering of Securities or other filings under the Securities Act, the Exchange Act or applicable state securities Laws in connection with the Contemplated Transactions), (iv) such consents, approvals, orders, authorizations, registrations, declarations, notices and filings as may be required under applicable state securities Laws, and (v) such other consents, licenses, permits, orders, authorizations, filings, approvals and registrations which, if not obtained or made, have not had, and would not reasonably be expected to result in, a Company Material Adverse Effect.

(c) This Section 2.4 does not relate to (i) Tax Laws, which are governed exclusively by Section 2.13 and Section 2.14, (ii) ERISA or other Laws regarding employee benefit matters, which are governed exclusively by Section 2.14, (iii) Labor Laws, which are governed exclusively by Section 2.15, (iv) Environmental Laws, which are governed exclusively by Section 2.16, or (v) Anticorruption Laws, which are governed exclusively by Section 2.21.

Section 2.5 SEC Filings; Financial Statements.

(a) The Company has filed or furnished, as applicable, on a timely basis all forms, statements, certifications, reports and documents required to be filed or furnished by it with the SEC under the Exchange Act or the Securities Act since January 1, 2015 (the forms, statements, reports and documents filed or furnished since January 1, 2015 and those filed or furnished subsequent to the date hereof, including any amendments thereto, the "***Company SEC Reports***"). Each of the Company SEC Reports, at the time of its filing or being furnished complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, and any rules and regulations promulgated thereunder applicable to the Company SEC Reports, or, if not yet filed or furnished, will to the Knowledge of the Company comply in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, and any rules and regulations promulgated thereunder applicable to the Company SEC Reports. As of their respective dates (or, if amended prior to the date hereof, as of the date of such amendment), the Company SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, and any the Company SEC Reports filed or furnished with the SEC subsequent to the date hereof will not to the Company's knowledge, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.

(b) As of the date of this Agreement, the Company has timely responded to all comment letters of the staff of the SEC relating to the Company SEC Reports, and the SEC has not advised the Company that any final responses are inadequate, insufficient or otherwise non-responsive. The Company has made available to Parent true, correct and complete copies of all comment letters, written inquiries and enforcement correspondence between the SEC, on the one hand, and the Company and any of its Subsidiaries, on the other hand, occurring since January 1, 2016 and will, reasonably promptly following the receipt thereof, make available to Parent any such correspondence sent or received after the date hereof. To the Knowledge of the Company, as of the date of this Agreement, none of the Company SEC Reports is the subject of ongoing SEC review or outstanding SEC comment.

(c) (i) Each of the consolidated financial statements (including, in each case, any notes or schedules thereto) included in or incorporated by reference into the Company SEC Reports fairly present, in all material respects, the consolidated financial position of the Company and its consolidated Subsidiaries as of its date, or, in the case of the Company SEC Reports filed after the date hereof, will fairly present, in all material respects, the consolidated financial position of the Company and its consolidated Subsidiaries as of its date and each of the consolidated statements of income, changes in stockholders' equity (deficit) and cash flows included in or incorporated by reference into the Company SEC Reports (including any related notes and schedules) fairly presents in all material respects, the results of operations, retained earnings (loss) and changes in financial position, as the case may be, of such companies for the periods set forth therein (except as indicated in the notes thereto, and in the case of unaudited statements, as may be permitted by the rules of the SEC, and subject to normal year-end audit adjustments that will not be material in amount or effect), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein, or in the case of the Company SEC Reports filed after the date hereof, will fairly present, in all material respects, the results of operations, retained earnings (loss) and changes in financial position, as the case may be, of such companies for the periods set forth therein (except as indicated in the notes thereto, and in the case of unaudited statements, as may be permitted by the rules of the SEC, and subject to normal year-end audit adjustments that will not be material in amount or effect), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein (the "***Company Financial Statements***").

(d) the Company has designed and maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of financial reporting, and, to the Knowledge of the Company, such system is effective in providing such assurance. The Company (i) maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms and, to the Knowledge of the Company, such disclosure controls and procedures are effective (ii) has disclosed, based on the most recent evaluation of its chief executive officer and its chief financial officer prior to the date hereof, to the Company's auditors and the Audit Committee of the Board of Directors of the Company (and made summaries of such disclosures available to Parent) (A) (i) any significant deficiencies in the design or operation of internal control over financial reporting that would adversely affect in any material respect the Company's ability to record, process, summarize and report financial information, and (ii) any material weakness in internal control over financial reporting, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting. Each of the Company and its Subsidiaries have materially complied with or substantially addressed such deficiencies, material weaknesses or fraud. The Company is in compliance in all material respects with all effective provisions of the Sarbanes-Oxley Act.

(e) Each of the principal executive officer of the Company and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act or Sections 302 and 906 of the Sarbanes-Oxley Act and the rules and regulations of the SEC promulgated thereunder with respect to the Company SEC Reports, and the statements contained in such certifications were true and correct on the date such certifications were made. For purposes of this Section 3.5(e), "principal executive officer" and "principal financial officer" has the meanings given to such terms in the Sarbanes-Oxley Act. None of the Company or any of its Subsidiaries has outstanding, or has arranged any outstanding, "extensions of credit" to directors or executive officers in violation of Section 402 of the Sarbanes-Oxley Act.

(f) Neither the Company or any of its Subsidiaries nor, to the Knowledge of the Company, any director, officer, employee, or internal or external auditor of the Company or any of its Subsidiaries has received or otherwise had or obtained actual knowledge of any substantive material complaint, allegation, assertion or claim, whether written or oral, that the Company or any of its Subsidiaries has engaged in questionable accounting or auditing practices.

Section 2.6 Absence of Changes. Since December 31, 2017, the Company and each of its Subsidiaries have conducted their respective businesses in all material respects in the Ordinary Course of Business. Except as set forth (x) in the Company SEC Reports, and (y) on Section 2.6 of the Company Disclosure Schedule, after December 31, 2017 and on or before the date hereof:

(a) there has not been any change, event, circumstance or condition to the Knowledge of the Company that, individually or in the aggregate, has had, or would reasonably be expected to have, a Company Material Adverse Effect;

(b) except as required as a result of a change in applicable Laws or GAAP or as disclosed in the notes to the Company Financial Statements, there has not been any material change in any method of accounting or accounting practice by the Company or any of its Subsidiaries;

(c) there has not been any other action, event or occurrence that would have required the consent of Parent pursuant toSection 4.4(b) of this Agreement had such action, event or occurrence taken place after the execution and delivery of this Agreement;

(d) there has not been any: (i) grant of or increase in any severance or termination pay to any employee or director of the Company or its Subsidiaries, (ii) entry into any employment, consulting, deferred or equity compensation, retention, change in control, transaction bonus, severance or other similar plan or agreement (or any amendment to any such existing agreement) with any new or current employee, director or other service provider of the Company or any of its Subsidiaries except in the Ordinary Course of Business, (iii) change in the compensation, bonus or other benefits payable or to become payable to its directors, officers, employees or consultants, except in the Ordinary Course of Business, or as required by any pre-existing plan or arrangement set forth in Section 2.6(d) of the Company Disclosure Schedule, (iv) action to accelerate the vesting or payment of any compensation or benefit to any employee or other service provider of the Company or its Subsidiaries, (v) adoption, modification or termination of any Company Employee Program other than as required by applicable Law, or (vi) termination of any of the officers or key employees of the Company or any of its Subsidiaries;

(e) the Company has not acquired or sold, pledged, leased, encumbered or otherwise disposed of any material property or assets or agreed to do any of the foregoing;

(f) other than the grant of non-exclusive licenses in the Ordinary Course of Business, there has been no transfer (by way of a license or otherwise) of, or agreement to transfer to, any Person's rights to any of the Company Intellectual Property;

(g) there has been no notice delivered to the Company of any claim of ownership by a third party of any of the Company Intellectual Property, or of infringement by the Company of any Third Party Intellectual Property; and

(h) there has not been any binding agreement to do any of the foregoing.

Section 2.7 Title to Assets. Each of the Company and its Subsidiaries owns, and has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or assets and equipment used or held for use in its business or operations or purported to be owned or leased by it. All of said assets are owned or leased by the Company or a Subsidiary of the Company free and clear of any Encumbrances, except for: (i) any lien for current Taxes not yet due and payable or for Taxes that are being contested in good faith and for which adequate reserves have been made on the Company's audited consolidated balance sheet at December 31, 2017, (ii) minor liens that have arisen in the Ordinary Course of Business and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of the Company and its Subsidiaries, taken as a whole, and (iii) Encumbrances described in Section 2.7 of the Company Disclosure Schedule.

Section 2.8 Properties.

(a) Section 2.8(a) of the Company Disclosure Schedule contains a complete and correct list, as of the date hereof, of the Company Leased Real Property, including with respect to each such Company Lease the date of such Company Lease and any material amendments thereto. With respect to each Company Lease, except as would not, individually or in the aggregate, have a Company Material Adverse Effect:

(i) the Company Leases and the Company Ancillary Lease Documents are valid and in full force and effect except to the extent they have previously expired or terminated in accordance with their terms. The Company has delivered to Parent full, complete and accurate copies of each of the Company Leases and all Company Ancillary Lease Documents described in Section 2.8(a)(i) of the Company Disclosure Schedule;

(ii) none of the Company Leases is subject to any Encumbrance other than a Permitted Encumbrance;

(iii) none of the Company or its Subsidiaries, nor, to the Knowledge of the Company, any other party to any Company Leases or Company Ancillary Lease Documents, is in breach or default, and, to the Knowledge of the Company, no event has occurred which, with notice or lapse of time, would constitute such a breach or default, under the Company Leases or any Company Ancillary Lease Documents;

(iv) none of Parent or its Subsidiaries has assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any of its rights and interest in the leasehold or subleasehold under any of the Company Leases or any Company Ancillary Lease Documents in a manner that is material to the Company and that relates to the use or occupancy of all or any portion of the Company Leased Real Property.

(b) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company owns good title, free and clear of all Encumbrances, to all personal property and other non-real estate assets, in all cases excluding the Company Intellectual Property, necessary to conduct the Company's business, except for Permitted Encumbrances, and (ii) the Company, as lessee, has the right under valid and subsisting leases to use, possess and control all personal property leased by the Company as now used, possessed and controlled by the Company.

(c) None of the Company or its Subsidiaries has any Company Owned Real Property.

Section 2.9 Intellectual Property.

(a) Section 2.9(a) of the Company Disclosure Schedule contains a complete and accurate list of all (i) Patents owned by the Company or any of its Subsidiaries or used or exclusively licensed to the Company or any of its Subsidiaries ("***Company Patents***"), registered and material unregistered Marks owned by the Company or any of its Subsidiaries ("***Company Marks***") and registered Copyrights owned by the Company or any of its Subsidiaries ("***Company Copyrights***"), (ii) licenses, sublicenses or other agreements under which the Company or any of its Subsidiaries is granted rights by others in the Company Intellectual Property ("***Company In-Licenses***") (other than commercial off the shelf software or materials transfer agreements), and (iii) licenses, sublicenses or other agreements under which the Company has granted rights to others in the Company Intellectual Property ("***Company Out-Licenses***").

(b) With respect to the Company Intellectual Property (i) owned or purported to be owned by the Company or any of its Subsidiaries, the Company or one of its Subsidiaries exclusively owns such Company Intellectual Property, and (ii) licensed to the Company or any of its Subsidiaries by a third party (other than commercial off the shelf software or materials transfer agreements), such Company Intellectual Property are the subject of a written license or other agreement; in the case of the foregoing clauses (i), and (ii) above, free and clear of all Encumbrances, other than Encumbrances resulting from the express terms of a Company In-License or Company Out-License or Permitted Encumbrances granted by the Company or one of its Subsidiaries.

(c) To the Knowledge of the Company, all Company Patents, Company Marks and Company Copyrights are valid and enforceable.

(d) To the Knowledge of the Company, each Company Patent that has been issued by, or registered with, or is the subject of an application filed with, as applicable, the U.S. Patent and Trademark Office or any similar office or agency anywhere in the world was issued, registered, or filed, as applicable, with the correct inventorship and there has been no known misjoinder or nonjoinder of inventors.

(e) No Company Patent is now involved in any interference, reissue, re-examination or opposition proceeding.

(f) There are no claims pending or, to the Knowledge of the Company, threatened in writing since January 1, 2016 against the Company or any of its Subsidiaries or any of their employees alleging that the operation of the Company's business or any activity by the Company or any of its Subsidiaries, or the manufacture, sale, offer for sale, importation, and/or use of any Company product candidates infringes or violates (or in the past infringed or violated) the rights of others in or to any Intellectual Property ("***Third Party Intellectual Property***") or constitutes a misappropriation of (or in the past constituted a misappropriation of) any subject matter of any Intellectual Property of any person or entity or that any Company Intellectual Property is invalid or unenforceable.

(g) To the Knowledge of the Company, the operation of the Company's business does not infringe or violate (or in the past infringed or violated) any Third Party Intellectual Property or constitutes a misappropriation of (or in the past constituted a misappropriation of) any subject matter of any Third Party Intellectual Property.

(h) Except with respect to fees payable to third party licensors pursuant to the Company In-Licenses, none of the Company or any of its Subsidiaries has any obligation to compensate any person for the use of any Intellectual Property. Except as set forth in Section 2.9(h) of the Company Disclosure Schedule, neither Parent nor any of its Subsidiaries has entered into any agreement to indemnify any other person against any claim of infringement or misappropriation of any Intellectual Property. There are no settlements, covenants not to sue, consents, judgments, or orders or similar obligations that: (i) restrict the rights of the Company or any of its Subsidiaries to use any Company Intellectual Property, (ii) restrict the Company or any of its Subsidiaries business, in order to accommodate a third party's Intellectual Property, or (iii) permit third parties to use any Company Intellectual Property (excluding any rights granted to any third parties pursuant to any of the Company Out-Licenses).

(i) All former and current employees, consultants and contractors of the Company and its Subsidiaries who have been involved in the creation and/or development of any Company Intellectual Property have executed written instruments with the Company or one or more of its Subsidiaries that assign to the Company, all rights, title and interest in and to any and all Intellectual Property created and/or developed by such employee, consultant or contractor in the course of their employment or engagement with the Company or the applicable Subsidiary.

(j) To the Knowledge of the Company, (i) there is no, nor has there been any, infringement or violation by any person or entity of any Company Intellectual Property owned by, or exclusively licensed to, the Company or any of its Subsidiaries, or the rights of the Company therein or thereto and (ii) there is no, nor has there been any, misappropriation by any person or entity of any Company Intellectual Property owned by, or exclusively licensed to, the Company or any of its Subsidiaries, or the subject matter thereof.

(k) The Company and each of its Subsidiaries has taken reasonable security measures to protect the secrecy, confidentiality and value of all Trade Secrets owned by the Company or used or held for use by the Company in the Company's business (the "***Company Trade Secrets***").

(l) Following the Effective Time, the Surviving Corporation will have substantially similar rights and privileges in the Company Intellectual Property as the Company had in the Company Intellectual Property immediately prior to the Effective Time.

Section 2.10 Material Contracts. Section 2.10 of the Company Disclosure Schedule is a correct and complete list of the following currently effective Company Contracts (each, a "***Company Material Contract***" and, collectively, "***Company Material Contracts***"):

(a) each Company Contract that constitutes the Company Leases and the Company Ancillary Lease Documents;

(b) each Company Contract for the purchase of materials, supplies, goods, services, equipment or other assets for annual payments by the Company or any of its Subsidiaries of, or pursuant to which in the last year the Company or any of its Subsidiaries paid, in the aggregate, $500,000 or more;

(c) each Company Contract for the sale of materials, supplies, goods, services, equipment or other assets for annual payments to the Company of, or pursuant to which in the last year the Company or any of its Subsidiaries received, in the aggregate, $500,000 or more;

(d) each Company Contract that relates to any partnership, joint venture, strategic alliance or other similar Contract;

(e) each Company Contract relating to Indebtedness for borrowed money or the deferred purchase price of property (whether incurred, assumed, guaranteed or secured by any asset), except for Contracts relating to Indebtedness in an amount not exceeding $500,000 in the aggregate;

(f) each Company Contract that provides for any employment, severance, retention, transaction bonus, change in control, consulting or other similar agreement between: (i) the Company or any of its Subsidiaries, on the one hand, and (ii) any employee, director or other individual service provider of the Company or its Subsidiaries, on the other hand, other than any such Contract that is terminable "at will" or without any obligation in excess of $100,000 on the part of the Company or any of its Subsidiaries to make any severance, bonus, termination, change in control or similar payment or to provide any other benefit with a value in excess of $100,000 (other than benefits required to be provided by applicable Law);

(g) each Company Contract which by its terms limits in any respect (i) the localities in which all or any significant portion of the business and operations of the Company or any Affiliate of the Company (which will include Parent after the Effective Time), or (ii) the right of the Company or any Affiliate of the Company (which will include Parent after the Effective Time) to compete with any Person;

(h) each Company Contract in respect of any Company Intellectual Property that provides for annual payments of, or pursuant to which in the last year the Company or any of its Subsidiaries paid or received, in the aggregate, $500,000 or more;

(i) each Company Contract containing any royalty, dividend or similar arrangement based on the revenues or profits of the Company or any of its Subsidiaries;

(j) each Company Contract with any Governmental Authority;

(k) each Company Contract with (a) an executive officer or director of the Company or any of its Subsidiaries or any of such executive officer's or director's immediate family members, (b) an owner of more than five percent (5%) of the voting power of the outstanding capital stock of the Company, or (c) to the Knowledge of the Company, any "related person" (within the meaning of Item 404 of Regulation S-K under the Securities Act) of any such officer, director or owner (other than the Company or any of its Subsidiaries);

(l) each Company Contract that gives rise to any material payment or benefit as a result of the performance of this Agreement or any of the other Contemplated Transactions;

(m) each Company Contract relating to the acquisition or disposition of any material interest in, or any material amount of, property or assets of the Company or any of its Subsidiaries or for the grant to any Person of any preferential rights to purchase any of its assets, other than in the Ordinary Course of Business; or

(n) any other each Company Contract (or group of related agreements) the performance of which requires aggregate payments to or from the Company or any of its Subsidiaries in excess of $500,000.

The Company has delivered or made available to Parent accurate and complete (except for applicable redactions thereto) copies of all Company Material Contracts, including all amendments thereto. There are no Company Material Contracts that are not in written form. Except as set forth on Section 2.10 of the Company Disclosure Schedule, neither the Company nor any Subsidiary of Parent has, nor, to the Knowledge of the Company, any other party to a Company Material Contract, has breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the material terms or conditions of any Company Material Contract in such manner as would permit any other party to cancel or terminate any such Company Material Contract, which has had or would reasonably be expected to have a Company Material Adverse Effect. As to the Company and its Subsidiaries, as of the date of this Agreement, each Company Material Contract is valid, binding, enforceable and in full force and effect, 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 consummation of the Contemplated Transactions will not (either alone or upon the occurrence of additional acts or events) result in any material payment or payments becoming due from the Company or the Surviving Corporation to any Person under any Company Material Contract or give any Person the right to terminate or materially alter the provisions of any Company Material Contract.

Section 2.11 Absence of Undisclosed Liabilities. As of the date hereof, neither the Company nor any Subsidiary of the Company has any Liability, Indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any kind, whether accrued, absolute, contingent, matured or unmatured (whether or not required to be reflected in the financial statements in accordance with GAAP) (each a "***Liability***"), individually or in the aggregate, except for: (a) Liabilities reflected or reserved against in the most recent unaudited consolidated balance sheet of the Company (or the notes thereto) made available to Parent, (b) normal and recurring current Liabilities that have been incurred by the Company or any Subsidiary of the Company since the date of the Company's unaudited consolidated balance sheet at September 30, 2018 in the Ordinary Course of Business, (d) Liabilities for the performance of the Company or its Subsidiaries under Company Contracts, Company Stock Option Plans or Company Employee Programs, (e) Liabilities described in Section 2.11 of the Company Disclosure Schedule or (f) Liabilities incurred in connection with the Contemplated Transactions.

Section 2.12 Compliance with Laws; Regulatory Compliance.

(a) Each of the Company and each of its Subsidiaries is in compliance with all Laws or Orders, except where any such failure to be in compliance has not had, or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or would not reasonably be expected to prevent or materially impair the consummation of the Contemplated Transactions. No investigation, inquiry, proceeding or similar action by any Governmental Authority with respect to the Company or any of its Subsidiaries is pending or, to the Knowledge of the Company, threatened in writing, nor, to the Knowledge of the Company, has any Governmental Authority indicated in writing an intention to conduct the same which, in each case, would reasonably be expected to have a Company Material Adverse Effect.

(b) Each of the Company and its Subsidiaries holds all material Permits from the U.S. Food and Drug Administration (the "***FDA***") and any other Governmental Authority that is concerned with the quality, identity, strength, purity, safety, efficacy, or manufacturing of Company product candidates (any such Governmental Authority, a "***Company Regulatory Agency***"), necessary for the operating of the Company's business in material compliance with applicable Laws (the "***Company Permits***"), including all Company Permits required under the Federal Food, Drug and Cosmetic Act of 1938, as amended, and the regulations of the FDA promulgated thereunder (the "***FDCA***"), the Public Health Service Act of 1944, as amended, and the regulations of the FDA promulgated thereunder (the "***PHSA***"), and any comparable Laws of other applicable jurisdictions. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, all such Company Permits are valid, and in full force and effect. There has not occurred any violation of, default (with or without notice or lapse of time or both) under, or event giving to others any right of termination, amendment or cancellation of, with or without notice or lapse of time or both, any Company Permit except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each of the Company and its Subsidiaries is in compliance in all material respects with the terms of all Company Permits, and no event has occurred that, to the Knowledge of the Company, would reasonably be expected to result in the revocation, cancellation, non-renewal or adverse modification of any Company Permit, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) None of the Company or its Subsidiaries nor, to the Knowledge of the Company, any employee or agent thereof, has made any untrue statement of material fact or a fraudulent statement to the FDA or any other Company Regulatory Agency, or failed to disclose a material fact required to be disclosed to the FDA or other such Company Regulatory Agency, or committed an act, made a statement, or failed to make a statement, in each such case related to the Company products candidates, that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy with respect to "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (Sept. 10, 1991) and any amendments thereto. None of the Company nor, to the Knowledge of the Company, any director, officer, employee or agent thereof, has engaged in any activity prohibited under U.S. federal or state criminal or civil health care Laws, including the U.S. federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the False Claims Act (31 U.S.C. §§ 3729 *et seq.*), the Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d *et seq.*), as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009, the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the FDCA, the PHSA, the regulations promulgated pursuant to such Laws, and any equivalent applicable Laws of other jurisdictions (each, a "***Health Care Law***"). There is no civil, criminal, administrative or other proceeding, notice or demand pending, received, or, to the Knowledge of the Company, threatened in writing against the Company that asserts an alleged violation, in any material respect, of any Health Care Law. None of the Company or its Subsidiaries or their employees or agents, has, under any Health Care Law, been debarred, excluded, suspended, or otherwise determined to be ineligible to participate in any health care programs of any Governmental Authority, convicted of any crime, or to the Knowledge of the Company, engaged in any conduct that has resulted in any such debarment, exclusion, suspension, ineligibility, or conviction, including any debarment mandated by 21 U.S.C. § 335a(a) or any similar Law or authorized by 21 U.S.C. § 335a(b) or any similar Law. The Company and its Subsidiaries are not party to any consent decrees (including plea agreements) or similar actions to which the Company or, to the Knowledge of the Company, any director, officer, employee or agent thereof, are bound or which relate to Company product candidates.

(d) Each of the Company and its Subsidiaries is in compliance in all material respects with all applicable Laws enforced by, and Orders of, the FDA and any other Company Regulatory Agency with respect to the labeling, storing, testing, development, manufacture, packaging and distribution of the Company product candidates. All required pre-clinical toxicology studies conducted by or on behalf of the Company, and all clinical trials sponsored by the Company or any of its Subsidiaries are being conducted in compliance in all material respects with applicable Company Permits and applicable Laws, including the applicable requirements of the FDCA and the regulations of the FDA promulgated thereunder, including any applicable requirements of 21 C.F.R. Parts 50, 54, 56, 58, 210, 211, and 312. The material results of any such studies, tests and trials, and all other material information related to such studies, tests and trials, have been made available to Parent. Each clinical trial conducted by or, to the Knowledge of the Company, on behalf of the Company or any of its Subsidiaries with respect to Company product candidates has been conducted in compliance in all material respects with all applicable Laws, including FDCA and the regulations of the FDA promulgated thereunder, including any applicable requirements of 21 C.F.R. Parts 50, 54, 56, 58, 210, 211 and 312. The Company has filed with applicable Company Regulatory Agencies all material notices required to be filed (and made available to Parent copies thereof) of adverse drug experiences, injuries or deaths relating to clinical trials conducted by or on behalf of the Company or any of its Subsidiaries with respect to the Company product candidates.

(e) The Company and its Subsidiaries have not received any written notice that the FDA or any other Company Regulatory Agency has initiated, or threatened in writing to initiate, any action to suspend any clinical trial, suspend or terminate any Investigational New Drug Application or similar Health Care Permit sponsored by the Company or any of its Subsidiaries, or otherwise materially restrict the pre-clinical research or clinical study of any Company product candidate or any drug product being developed by or on behalf of the Company or any of its Subsidiaries, or to recall, suspend or otherwise materially restrict the development or manufacture of any Company product candidate, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the Knowledge of the Company, there is no act, omission, event or circumstance that would reasonably be expected to give rise to any such action or event.

(f) With respect to the Company's business, the Company has made available to Parent for review copies of any and all material regulatory applications and submissions (and any supplements or amendments thereto) under applicable Health Care Laws; Company Permits; written notices of inspectional observations and establishment inspection reports of Company Regulatory Agencies; notifications, communications, correspondence, registrations, master files, and/or other filings made to, received from or otherwise conducted with a Company Regulatory Agency, reports or other documents of the Company or any of its Subsidiaries that assert or address lack of material compliance with any Health Care Laws, or the likelihood or timing of marketing approval of any Company product candidates; records and other materials maintained to comply with applicable Health Care Laws (*e.g.*, regarding good laboratory practice, good clinical practice, and good manufacturing practice); and records that are necessary or advisable in order to obtain Company Permits or other approvals from Company Regulatory Agencies. Such books and records are complete and correct in all material respects and have been maintained in accordance with sound business practices, including the maintenance of an adequate system of internal controls.

Section 2.13 Taxes and Tax Returns.

(a) Each material Tax Return required to be filed by, or on behalf of, the Company or any of its Subsidiaries, and each material Tax Return in which the Company or any of its Subsidiaries was required to be included, has been filed. Each such Tax Return is true, correct and complete in all material respects.

(b) The Company and each of its Subsidiaries (i) has paid (or has had paid on its behalf) all material Taxes due and owing, whether or not shown as due on any Tax Return, and (ii) has withheld and remitted to the appropriate Taxing Authority, or properly set aside, all material Taxes required to be withheld and paid in connection with any amounts paid or owing to or collected from any employee, independent contractor, supplier, creditor, stockholder, partner, member or other third party, and all Forms W-2 and 1099 required with respect thereto have been filed.

(c) The unpaid Taxes of the Company and its Subsidiaries (A) did not, as of September 30, 2018, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Company Financial Statements (rather than in any notes thereto), and (B) will not exceed that reserve as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of the Company and its Subsidiaries in filing their Tax Returns.

(d) There are no material liens for Taxes (other than Taxes not yet due and payable or that are being contested in good faith pursuant to appropriate proceedings) upon any of the assets of the Company or any of its Subsidiaries.

(e) None of the Company or any of its Subsidiaries has waived any statute of limitations with respect to any material Taxes or agreed to any extension of the period for assessment or collection of any Taxes to a date after the Closing Date.

(f) No audit or other examination of any Tax Return of the Company or any of its Subsidiaries by any Taxing Authority has occurred within the past three (3) years and there is no material Tax claim, audit, suit, or administrative or judicial Tax proceeding now pending or presently in progress or threatened in writing by a taxing authority with respect to a material Tax Return of the Company or any of its Subsidiaries.

(g) None of the Company or any of its Subsidiaries has distributed stock of a corporation, or has had its stock distributed, in a transaction purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code within the five (5) year period ending on the date of this Agreement.

(h) None of the Company or any of its Subsidiaries (A) is or has ever been a member of a group of corporations that files or has filed (or has been required to file) consolidated, combined, or unitary Tax Returns, other than a group the common parent of which is or was the Company, or (B) has any liability for the Taxes of any person (other than the Company or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor pursuant to any written agreement, a principal purpose of which is the sharing of, or indemnification for, Taxes (a "***Tax Sharing Agreement***"). None of the Company or any of its Subsidiaries is party to or has any obligation under any Tax Sharing Agreement.

(i) None of the Company or any of its Subsidiaries has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code at any time during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(j) None of the Company or any of its Subsidiaries has participated in a "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2) (or any predecessor provision).

(k) None of the Company or any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any:

(i) change in method of accounting made prior to the Closing Date, or use of an improper method of accounting for a taxable period ending on or prior to the Closing Date;

(ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law) executed prior to the Closing;

(iii) installment sale or open transaction disposition made prior to the Closing;

(iv) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax Law);

(v) transactions effected or investments made prior to the Closing that result in taxable income pursuant to Section 951(a) or 951A of the Code;

(vi) prepaid amount received (or deferred revenue accrued) prior to the Closing;

(vii) election with respect to income from the discharge of indebtedness under Section 108(i) of the Code made prior to the Closing; or

(viii) an election under Section 965 of the Code made prior to the Closing.

(l) No written claim has been made by any Taxing Authority in a jurisdiction where it does not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to Tax or required to file a Tax Return in the jurisdiction.

(m) None of the Company or any Subsidiary (i) has, or has ever had, a permanent establishment in any country other than the country in which it is organized and resident, (ii) has engaged in a trade or business in any country other than the country in which it is organized and resident that subjected it to Tax in such country, and (iii) is, or has ever been, subject to Tax in a jurisdiction outside the country in which it is organized and resident.

(n) No Subsidiary of the Company that is incorporated in a non-US jurisdiction has an investment in "United States Property" within the meaning of Section 956(c) of the Code.

(o) All transactions between the Company and each of its Subsidiaries are at arm's-length, in compliance in all material respects with all applicable transfer pricing laws and regulations.

(p) As of the date hereof, neither the Company nor any of its Subsidiaries or their Affiliates has taken or agreed to take any action, nor does the Company or any of its Subsidiaries have knowledge of any fact or circumstance that could reasonably be expected to prevent the Merger, together with the issuance of shares of Parent Common Stock to the Company Stockholders, from qualifying as a reorganization within the meaning of Section 368(a) of the Code. To the Company's knowledge, there are no agreements, plans or other circumstances that would reasonably be expected to prevent the Merger, together with the issuance of shares of Parent Common Stock to the Company Stockholders, from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(q) Notwithstanding any provision in this Agreement to the contrary, the Company does not make (and shall not be construed to be making) any representation or warranty as to the existence, amount, utilization or any other aspect of any net operating or capital loss, carryovers, carryforwards of business or other tax credits, tax basis, earnings and profits, or any other tax attribute (whether of the Company or any of its Subsidiaries) after the Closing, and the representations contained in Section 2.13 and Section 2.14 (solely as such representations relate to Taxes or Tax Returns) (the "***Company Tax Representations***") shall constitute the sole and exclusive representations and warranties by the Company with respect to Taxes or Tax Returns. Other than the Company Tax Representations in Section 2.13(h), Section 2.13(k) and Section 2.13(p), no Company Tax Representation shall be deemed to apply directly or indirectly with respect to any taxable period after the Closing.

Section 2.14 Employee Benefit Programs.

(a) Section 2.14(a) of the Company Disclosure Schedule sets forth a list of every Employee Program maintained by the Company or any of its Subsidiaries (the "***Company Employee Programs***").

(b) Each Company Employee Program that is intended to qualify under Section 401(a) of the Code has received a favorable determination or approval letter from the IRS with respect to such qualification, or may rely on an opinion letter issued by the IRS with respect to a prototype plan adopted in accordance with the requirements for such reliance, or has time remaining for application to the IRS for a determination of the qualified status of such Company Employee Program for any period for which such Company Employee Program would not otherwise be covered by an IRS determination. To the Knowledge of the Company, no event or omission has occurred that would reasonably be expected to cause any Company Employee Program intended to qualify under Section 401(a) of the Code to lose its qualification or otherwise fail to satisfy the relevant requirements to provide tax-favored benefits.

(c) Each Company Employee Program has been administered in all material respects in accordance with its terms and in accordance with ERISA, the Code and other applicable Laws. No litigation or governmental administrative proceeding (or investigation) or other proceeding (other than those relating to routine claims for benefits) is pending or, to the Knowledge of the Company, threatened in writing with respect to any such Company Employee Program. All payments and/or contributions required to have been made (under the provisions of any agreements or other governing documents or applicable Laws) with respect to all Company Employee Programs, for all periods prior to the Closing Date, either have been made or have been accrued or otherwise adequately reserved on the Company Financial Statements except as would not be material.

(d) No Company Employee Program has been or is subject to Section 302 or Title IV of ERISA and/or Code Section 412, including a Multiemployer Plan, and the Company does not have any liability for any Employee Program that is subject to Title IV of ERISA and that is or has been maintained, contributed to, or required to be contributed to by an ERISA Affiliate of the Company. None of the Company Employee Programs provides (or has ever provided) health care or any other welfare benefits to any employees after their employment is terminated (other than as required by part 6 of subtitle B of title I of ERISA or state continuation Laws to which the former employee pays all required premiums) or has ever promised to provide such post-termination benefits.

(e) For purposes of this Section 2.14:

(i) An entity "maintains" an Employee Program if such entity sponsors, contributes to, or provides benefits under or through such Employee Program, or has any obligation (by agreement or under applicable Laws) to contribute to or provide benefits under or through such Employee Program, or if such Employee Program provides benefits to or otherwise covers or has covered employees of such entity (or their spouses, dependents, or beneficiaries).

(ii) An entity is an "ERISA Affiliate" of the Company if it would have ever been considered a single employer with the Company or any Subsidiary of the Company under ERISA Section 4001(b) or Code Section 414(b), (c), or (m).

(f) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 2.14(a) through Section 2.14(e) constitute the sole and exclusive representations and warranties of the Company and its Subsidiaries relating to ERISA and other Laws relating to employee benefits matters.

Section 2.15 Labor and Employment Matters.

(a) None of the Company or any of its Subsidiaries is a party to, or otherwise bound by, any collective bargaining agreement, contract, or other written agreement with a labor union or labor organization. Neither the Company nor any of its Subsidiaries is subject to, and during the past three (3) years there has not been, any charge, demand, petition, organizational campaign, or representation proceeding seeking to compel, require, or demand it to bargain with any labor union or labor organization nor is there pending any labor strike or lockout involving the Company.

(b) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, (i) the Company and its Subsidiaries are in compliance with all applicable material Laws respecting labor, employment, fair employment practices, work safety and health, terms and conditions of employment, and wages and hours, including Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1967, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Americans with Disabilities Act, as amended, the Fair Labor Standards Act, as amended, and its state and local law equivalents, and the related rules and regulations adopted by those federal and state agencies responsible for the administration of such Laws, and other than normal accruals of wages during regular payroll cycles, there are no arrearages in the payment of wages, (ii) neither the Company nor any of its Subsidiaries is delinquent in any payments to any employee or to any independent contractors, consultants, temporary employees, leased employees or other servants or agents employed or used with respect to the operation of the Company's business and classified by the Company or any of its Subsidiaries as other than an employee or compensated other than through wages paid by the Company or any of its Subsidiaries through its respective payroll department ("***Company Contingent Workers***"), for any wages, salaries, commissions, bonuses, fees or other direct compensation due with respect to any services performed for it to the date hereof or amounts required to be reimbursed to such employees or Company Contingent Workers, (iii) there are no grievances, complaints or charges with respect to employment or labor matters (including allegations of employment discrimination, retaliation or unfair labor practices) pending or, to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries in any judicial, regulatory or administrative forum or under any private dispute resolution procedure, (iv) all employees of the Company and its Subsidiaries are employed at-will and no such employees are subject to any contract with the Company or any of its Subsidiaries or any policy or practice of the Company providing for right of notice of termination of employment or the right to receive severance payments or similar benefits upon the termination of employment by the Company or any of its Subsidiaries, (v) neither the Company nor any of its Subsidiaries has experienced a "plant closing," "business closing," or "mass layoff" as defined in the Worker Adjustment and Retraining Notification Act (the " ***WARN Act***") or any similar Law affecting any site of employment of the Company or any of its Subsidiaries or one or more facilities or operating units within any site of employment or facility of the Company or any of its Subsidiaries, and, during the ninety (90)-day period preceding the date hereof, no employee has suffered an "employment loss," as defined in the WARN Act, with respect to the Company or any of its Subsidiaries, and (vi) there are no pending or, to the Knowledge of the Company, threatened or reasonably anticipated claims or actions against the Company or any of its Subsidiaries under any workers' compensation policy or long-term disability policy.

(c) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 2.15(a) and Section 2.15(b) constitute the sole and exclusive representations and warranties of the Company and its Subsidiaries relating to collective bargaining matters and compliance with Labor Laws.

Section 2.16 Environmental Matters. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect:

(a) the Company and its Subsidiaries are in compliance with all Environmental Laws applicable to their operations and use of the Company Leased Real Property;

(b) none of the Company or any of its Subsidiaries has generated, transported, treated, stored, or disposed of any Hazardous Material, except in material compliance with all applicable Environmental Laws, and there has been no Release or threat of Release of any Hazardous Material by the Company or its Subsidiaries at or on the Company Leased Real Property that requires reporting, investigation or remediation by the Company or its Subsidiaries pursuant to any Environmental Law; and

(c) none of Parent or any of its Subsidiaries has (i) received written notice under the citizen suit provisions of any Environmental Law, or (ii) been subject to or, to the Knowledge of the Company, threatened in writing with any governmental or citizen enforcement action with respect to any Environmental Law.

(d) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 2.16 constitute the sole and exclusive representations and warranties of the Company and its Subsidiaries relating to Environmental Laws.

Section 2.17 Insurance. The Company has delivered or made available to Parent accurate and complete copies of all material insurance policies relating to the business, assets, liabilities and operations of the Company and each Subsidiary of the Company, as of the date hereof. Each of such insurance policies is in full force and effect and the Company and each Subsidiary of the Company are in compliance in all material respects with the terms thereof. Other than customary end of policy notifications from insurance carriers, since January 1, 2016, neither the Company nor any Subsidiary of the Company has received any written notice regarding any actual or possible: (i) cancellation or invalidation of any insurance policy, (ii) refusal or denial of any coverage, reservation of rights or rejection of any material claim under any insurance policy, or (iii) material adjustment in the amount of the premiums payable with respect to any insurance policy.

Section 2.18 Books and Records. Each of the minute and record books of the Company has been made available to Parent and contains, in all material respects, complete and accurate minutes of all meetings of, and copies of all bylaws and resolutions passed by, or consented to in writing by, the directors (and any committees thereof) and stockholders of the Company, since January 1, 2013 and which are required to be maintained in such books under applicable Laws; all such meetings were duly called and held and all such bylaws and resolutions were duly passed or enacted.

Section 2.19 Transactions with Affiliates. Except as set forth in the Company SEC Reports filed prior to the date of this Agreement, since the date of the Company's last proxy statement filed in 2018 with the SEC, no event has occurred that would be required to be reported by the Company pursuant to Item 404 of Regulation S-K promulgated by the SEC. Section 2.19 of the Company Disclosure Schedule identifies each Person who is (or who may be deemed to be) an "affiliate" (as that term is used in Rule 12b-2 under the Exchange Act) of the Company as of the date of this Agreement.

Section 2.20 Legal Proceedings; Orders.

(a) There is no pending Legal Proceeding, and, to the Knowledge of the Company, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves the Company, any Subsidiary of Parent, any director or officer of the Company (in his or her capacity as such) or any of the material assets owned or used by the Company and/or any Subsidiary, or (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 Contemplated Transactions. To the Knowledge of the Company, no event has occurred, and no claim, dispute or other condition or circumstance exists, that will, or that would reasonably be expected to, give rise to or serve as a basis for the commencement of any such Legal Proceeding.

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

Section 2.21 Illegal Payments. None of the Company, any of its Subsidiaries, or, to the Knowledge of the Company, any of their respective directors, officers, employees or agents have, directly or indirectly, made, offered, promised or authorized any payment or gift of any money or anything of value to or for the benefit of any "***foreign official***" (as such term is defined in the U.S. Foreign Corrupt Practices Act (the "***FCPA***")), foreign political party or official thereof or candidate for foreign political office for the purpose of, in violation of applicable Laws: (i) influencing any act or decision of such foreign official in his, her or its official capacity, including a decision to fail to perform his, her or its official duties or functions, or (ii) inducing such foreign official to use his, her or its influence with any Governmental Authority to affect or influence any act or decision of such Governmental Authority, or to obtain an improper advantage in order to assist the Company, any of its Subsidiaries or any other Person in obtaining or retaining business for or with, or directing business to, the Company or any of its Subsidiaries. Notwithstanding any other provision of this Agreement, the representations and warranties contained in this Section 2.21 constitute the sole and exclusive representations and warranties of the Company and its Subsidiaries relating to compliance with Anticorruption Laws.

Section 2.22 Inapplicability of Anti-takeover Statutes. The Board of Directors of the Company has taken and will take all actions necessary to ensure that the restrictions applicable to business combinations contained in Section 203 of the DGCL are, and will be, inapplicable to the execution, delivery and performance of this Agreement and to the consummation of the Merger and the other Contemplated Transactions.

Section 2.23 Vote Required. The affirmative vote (or action by written consent) of the holders of a majority of the outstanding shares of Company Common Stock (the "***Company Stockholder Approval***") is the only vote or consent of the holders of any class or series of Company Capital Stock necessary to adopt or approve this Agreement, approve the Merger, and the Contemplated Transactions and the other matters set forth in Section 5.2(a) of this Agreement.

Section 2.24 No Financial Advisor. Except as set forth on Section 2.24 of the Company Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage fee, finder's fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Merger or any of the other Contemplated Transactions based upon arrangements made by or on behalf of the Company or any Subsidiary of the Company.

Section 2.25 Investment Company Act. The Company is not, and at the Effective Time will not be, required to be registered under the Investment Company Act of 1940, as amended.

Section 2.26 Disclosure; Company Information. None of the information provided by the Company specifically for inclusion in the Joint Proxy Statement/Prospectus will, at the time of the mailing of the Joint Proxy Statement/Prospectus or any amendment or supplement thereto or at the time of the Parent Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information provided by the Company to be included in the Form S-4 Registration Statement will, at the time the Form S-4 Registration Statement is filed with the SEC or at the S-4 Effective Date, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, no representation is made by the Company with respect to the information that has been or will be supplied by Parent, Merger Sub, or any of their Representatives for inclusion in the Joint Proxy Statement/Prospectus.

Section 2.27 No Other Representations or Warranties. The Company hereby acknowledges and agrees that, except for the representations and warranties contained in this Agreement, neither Parent nor any of its Subsidiaries nor any other person on behalf of Parent or its Subsidiaries makes any express or implied representation or warranty with respect to Parent or its Subsidiaries or with respect to any other information provided to the Company, any of its Subsidiaries or their respective stockholders, Affiliates or Representatives in connection with the transactions contemplated hereby, and (subject to the express representations and warranties of Parent set forth in Article 3 (in each case as qualified and limited by the Parent SEC Reports and the Parent Disclosure Schedule)) none of the Company, its Subsidiaries or any of their respective stockholders, Affiliates or Representatives, has relied on any such information (including the accuracy or completeness thereof).

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF PARENT

Parent represents and warrants to the Company as follows, except as set forth in (x) the Parent SEC Reports filed after January 1, 2015 and prior to the date hereof (other than any disclosures contained or referenced therein under the captions "Risk Factors," "Forward-Looking Statements," "Quantitative and Qualitative Disclosures About Market Risk" and any other disclosures contained or referenced therein of information, factors or risks that are cautionary, predictive or forward-looking in nature), or (y) the written disclosure schedule delivered by Parent to the Company (the "***Parent Disclosure Schedule***"). The Parent Disclosure Schedule shall be arranged in parts and subparts corresponding to the numbered and lettered sections and subsections contained in this Article 3. The disclosures in any part or subpart of the Parent Disclosure Schedule shall qualify other Sections and subsections in this Article 3 to the extent it is reasonably apparent from the face of the disclosure that such disclosure is applicable to such other Sections and subsections.

Section 3.1 Organization.

(a) Parent is a corporation validly existing and in good corporate standing under the Laws of the State of Delaware. Parent has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted. Parent is duly licensed or qualified to do business and is in corporate good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased, or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in corporate good standing would not, either individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. The Parent Charter and Parent Bylaws, copies of which have previously been made available to the Company, are true, correct and complete copies of such documents as currently in effect and Parent is not in violation of any provision thereof. Other than the Parent Charter and Parent Bylaws, Parent is not a party to or bound by or subject to any stockholder agreement or other similar agreement governing the voting or transfer of the capital stock of Parent and is not subject to a stockholder rights plan.

(b) Merger Sub is a corporation duly incorporated, validly existing and in good corporate standing under the Laws of the State of Delaware. Merger Sub was formed solely for the purpose of engaging in the Merger. All of the issued and outstanding capital stock of Merger Sub, which consists of 1,000 shares of common stock, $0.0001 par value, is validly issued, fully paid and non-assessable, and is owned, beneficially and of record, by Parent, free and clear of any claim, lien, Encumbrance, or agreement with respect thereto. Except for obligations and liabilities incurred in connection with its incorporation and the Merger, Merger Sub has not, and will not have, incurred, directly or indirectly, any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person. The Certificate of Incorporation and Bylaws of Merger Sub, copies of which have previously been made available to the Company, are true, correct and complete copies of such documents as currently in effect and Merger Sub is not in violation of any provision thereof.

(c) Each Subsidiary of Parent is a corporation or legal entity, validly existing and, if applicable, in good standing under the Laws of the jurisdiction of its organization. Each Subsidiary of Parent has all requisite corporate power or other power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted. Each Subsidiary of Parent is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased, or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in good standing would not, either individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. The certificate of incorporation and bylaws or equivalent organizational documents of each of Parent's Subsidiaries (other than Merger Sub), copies of which have previously been made available to the Company, are true, correct and complete copies of such documents as currently in effect and such Subsidiaries of Parent are not in violation of any provision thereof.

Section 3.2 Capitalization.

(a) As of the date hereof, the authorized capital stock of Parent consists of (i) 250,000,000 shares of Parent Common Stock and (ii) 15,000,000 shares Parent Preferred Stock, of which (A) 1,500,000 shares are designated as Series A Preferred Stock, and (B) 500,000 shares of which are designated as Series A-1 Preferred Stock. As of December 31, 2018, there were 7,555,004 shares of Parent Common Stock issued and outstanding, 550,000 shares of Parent Series A Preferred Stock issued and outstanding and 500,000 shares of Parent Series A-1 Preferred Stock issued and outstanding. As of the date hereof, there are no shares of Parent Common Stock and no shares of Parent Preferred Stock held in the treasury of Parent. Parent has no shares of Parent Common Stock or Parent Preferred Stock reserved for issuance other than as described herein or in the Parent Disclosure Schedule. The outstanding shares of Parent Common Stock have been duly authorized, validly issued, fully paid and nonassessable, and were not issued in violation of the material terms of any agreement binding upon Parent at the time at which they were issued and were issued in compliance with the Parent Charter and Parent Bylaws and all applicable securities Laws. As of December 31, 2018, there were 1,050,000 shares of Parent Common Stock issuable, and reserved for issuance, upon conversion of all outstanding shares of Parent Series A Preferred Stock and Parent Series A-1 Preferred Stock, subject to adjustment on the terms set forth in the applicable certificates of designation.

(b) Except for the Parent Stock Option Plans and the Parent Warrants, Parent does not have and is not bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements, or agreements of any character calling for Parent to issue, deliver, or sell, or cause to be issued, delivered, or sold any shares of Parent Common Stock or any other equity security of Parent or any Subsidiary of Parent or any securities convertible into, exchangeable for, or representing the right to subscribe for, purchase, or otherwise receive any shares of Parent Common Stock or any other equity security of Parent or any Subsidiary of Parent or obligating Parent or any such Subsidiary to grant, extend, or enter into any such subscriptions, options, warrants, calls, commitments, rights agreements, or any other similar agreements. There are no registration rights, repurchase or redemption rights, anti-dilutive rights, voting agreements, voting trusts, preemptive rights or restrictions on transfer relating to any capital stock of Parent.

(c) As of December 31, 2018, there were 1,341,000 shares of Parent Common Stock issuable upon exercise of all outstanding Parent Stock Options, subject to adjustment on the terms set forth in the Parent Stock Option Plans. Section 3.2(c) of the Parent Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of (i) the name of the holder of each Parent Stock Option, (ii) the date each Parent Stock Option was granted, (iii) the number, issuer and type of securities subject to each such Parent Stock Option, (iv) the expiration date of each such Parent Stock Option, (v) the vesting schedule of each such Parent Stock Option, (vi) the price at which each such Parent Stock Option (or each component thereof, if applicable) may be exercised, (vii) the number of shares of Parent Common Stock issuable upon the exercise of such, or upon the conversion of all securities issuable upon the exercise of such, Parent Stock Options, and (viii) whether and to what extent the exercisability of each Parent Stock Option will be accelerated upon consummation of the Contemplated Transactions or any termination of employment thereafter.

(d) As of December 31, 2018, there were 6,075,769 shares of Parent Common Stock issuable upon exercise of all outstanding Parent Warrants, subject to adjustment on the terms set forth in the Parent Warrants. Section 3.2(d) of the Parent Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of (i) the name of the holder of each Parent Warrant, (ii) the date each Parent Warrant was issued, (iii) the number, issuer and type of securities subject to each such Parent Warrant, (iv) the expiration date of each such Parent Warrant, (v) the price at which each such Parent Warrant (or each component thereof, if applicable) may be exercised, and (vi) the number of shares of Parent Common Stock issuable upon the exercise of such, or upon the conversion of all securities issuable upon the exercise of such, Parent Warrant.

(e) As of the date hereof, there are no shares of Parent Common Stock subject to forfeiture under outstanding Parent Restricted Stock Awards. Section 3.2(d) of the Parent Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of (i) the name of the holder of each Parent Restricted Stock Award, (ii) the number of shares of Parent Common Stock subject to the award, (iii) the vesting schedule of each such Parent Restricted Stock Award, and (iv) whether and to what extent the vesting of each Parent Restricted Stock Award will be accelerated upon consummation of the Contemplated Transactions or any termination of employment thereafter.

(f) Section 3.2(f) of the Parent Disclosure Schedule lists each Subsidiary of Parent, other than Merger Sub, as of the date hereof and indicates for each such Subsidiary as of such date (i) the percentage and type of equity securities owned or controlled, directly or indirectly, by Parent, and (ii) the jurisdiction of incorporation or organization. No Subsidiary of Parent has or is bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements, or agreements of any character calling for it to issue, deliver, or sell, or cause to be issued, delivered, or sold any of its equity securities or any securities convertible into, exchangeable for, or representing the right to subscribe for, purchase or otherwise receive any such equity security or obligating such Subsidiary to grant, extend or enter into any such subscriptions, options, warrants, calls, commitments, rights agreements, or other similar agreements. There are no outstanding contractual obligations of any Subsidiary of Parent to repurchase, redeem, or otherwise acquire any of its capital stock or other equity interests. All of the shares of capital stock of each of the Subsidiaries of Parent (A) have been duly authorized and are validly issued, fully paid (to the extent required under the applicable governing documents) and nonassessable, and (B) are owned by Parent free and clear of any claim, lien, Encumbrance (other than Permitted Encumbrances), or agreement with respect thereto.

(g) The Parent Common Stock to be issued in the Merger, and upon exercise of the Company Warrants and conversion of the Company Convertible Notes, will, when issued in accordance with the provisions of this Agreement, the Company Warrants and the Company Convertible Notes, have been duly authorized, and be validly issued, fully paid and nonassessable.

Section 3.3 Authority. Each of Parent and Merger Sub has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the Contemplated Transactions and perform its respective obligations hereunder, subject only to obtaining Parent Stockholder Approval. The adoption, execution, delivery and performance of this Agreement and the approval of the consummation of the Contemplated Transactions have been duly and validly adopted and approved by each of the Board of Directors of Parent and Merger Sub by unanimous vote of the directors participating in such votes. The Board of Directors of Parent has recommended that the stockholders of Parent approve the Parent Stockholder Proposals at the Parent Stockholder Meeting. The Board of Directors of Merger Sub has declared this Agreement advisable and has recommended that the sole stockholder of Merger Sub adopt this Agreement and approve the Merger. Except for Parent Stockholder Approval and the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, no other corporate or other proceeding on the part of Parent or Merger Sub is necessary to authorize the adoption, execution, delivery and performance of this Agreement or to consummate the Merger and the other Contemplated Transactions. This Agreement has been duly and validly executed and delivered by Parent and Merger Sub, and (assuming due authorization, execution and delivery by the other parties hereto), constitutes the legal, valid and binding obligations of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.4 Non-Contravention; Consents.

(a) The execution and delivery of this Agreement by Parent and Merger Sub does not, and the consummation by Parent and Merger Sub of the Contemplated Transactions will not, (i) conflict with, or result in any violation or breach of, any provision of the Parent Charter or Parent Bylaws or of the charter, bylaws, or other organizational document of any Subsidiary of Parent, (ii) conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, constitute a change in control under, require the payment of a penalty under or result in the imposition of any Encumbrances on Parent's or any of its Subsidiaries' assets under, any of the terms, conditions or provisions of any Parent Material Contract or other agreement, instrument or obligation to which Parent or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound, or (iii) subject to obtaining Parent Stockholder Approval and subject to the consents, approvals and authorizations specified in clauses (i) through (v) of Section 3.4(b) having been obtained prior to the Effective Time and all filings and notifications described inSection 3.4(b) having been made, conflict with or violate any Law applicable to Parent or any of its Subsidiaries or any of its or their properties or assets, except in the case of clauses (ii), and (iii) of this Section 3.4(a) for any such conflicts, violations, breaches, rights of termination, Encumbrances, penalties, defaults, terminations, cancellations, accelerations, losses, changes of control, or payments, that have not had, and would not reasonably be expected to result in, a Parent Material Adverse Effect.

(b) No consent, approval, license, permit, order or authorization of, or registration, declaration, notice or filing with, any Governmental Authority is required by or with respect to Parent or any of its Subsidiaries in connection with the execution and delivery of this Agreement by Parent and Merger Sub or the consummation by Parent and Merger Sub of the Contemplated Transactions, except for (i) obtaining Parent Stockholder Approval, (ii) the filing of the Certificate of Merger with the Delaware Secretary of State and appropriate corresponding documents with the appropriate authorities of other states in which Parent is qualified as a foreign corporation to transact business, (iii) any filings required to be made with the SEC in connection with Parent Stockholder Meeting, this Agreement and the Contemplated Transactions (including (A) the filing of the Form S-4 Registration Statement and the Joint Proxy Statement/Prospectus with the SEC in accordance with the Securities Act and the Exchange Act, respectively, and (B) the filing of a Form D Notice of Exempt Offering of Securities or other filings under the Securities Act, the Exchange Act or applicable state securities Laws in connection with the Contemplated Transactions), (iv) such consents, approvals, orders, authorizations, registrations, declarations, notices and filings as may be required under applicable state securities Laws, the rules and regulations of NASDAQ, and (v) such other consents, licenses, permits, orders, authorizations, filings, approvals and registrations which, if not obtained or made, have not had, and would not reasonably be expected to result in, a Parent Material Adverse Effect.

(c) This Section 3.4 does not relate to (i) Tax Laws, which are governed exclusively by Section 3.13 and Section 3.14, (ii) ERISA or other Laws regarding employee benefit matters, which are governed exclusively by Section 3.14, (iii) Labor Laws, which are governed exclusively by Section 3.15, (iv) Environmental Laws, which are governed exclusively by Section 3.16, or (v) Anticorruption Laws, which are governed exclusively by Section 3.21.

Section 3.5 SEC Filings; Financial Statements.

(a) Parent has filed or furnished, as applicable, on a timely basis all forms, statements, certifications, reports and documents required to be filed or furnished by it with the SEC under the Exchange Act or the Securities Act since January 1, 2012 (the forms, statements, reports and documents filed or furnished since January 1, 2012 and those filed or furnished subsequent to the date hereof, including any amendments thereto, the "***Parent SEC Reports***"). Each of the Parent SEC Reports, at the time of its filing or being furnished complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, and any rules and regulations promulgated thereunder applicable to the Parent SEC Reports, or, if not yet filed or furnished, will to the Knowledge of Parent comply in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, and any rules and regulations promulgated thereunder applicable to the Parent SEC Reports. As of their respective dates (or, if amended prior to the date hereof, as of the date of such amendment), the Parent SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, and any Parent SEC Reports filed or furnished with the SEC subsequent to the date hereof will not to Parent's knowledge, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.

(b) As of the date of this Agreement, Parent has timely responded to all comment letters of the staff of the SEC relating to the Parent SEC Reports, and the SEC has not advised Parent that any final responses are inadequate, insufficient or otherwise non-responsive. Parent has made available to the Company true, correct and complete copies of all comment letters, written inquiries and enforcement correspondence between the SEC, on the one hand, and Parent and any of its Subsidiaries, on the other hand, occurring since January 1, 2015 and will, reasonably promptly following the receipt thereof, make available to the Company any such correspondence sent or received after the date hereof. To the Knowledge of Parent, as of the date of this Agreement, none of the Parent SEC Reports is the subject of ongoing SEC review or outstanding SEC comment.

(c) (i) Each of the consolidated financial statements (including, in each case, any notes or schedules thereto) included in or incorporated by reference into the Parent SEC Reports fairly present, in all material respects, the consolidated financial position of Parent and its consolidated Subsidiaries as of its date, or, in the case of the Parent SEC Reports filed after the date hereof, will fairly present, in all material respects, the consolidated financial position of Parent and its consolidated Subsidiaries as of its date and each of the consolidated statements of income, changes in stockholders' equity (deficit) and cash flows included in or incorporated by reference into the Parent SEC Reports (including any related notes and schedules) fairly presents in all material respects, the results of operations, retained earnings (loss) and changes in financial position, as the case may be, of such companies for the periods set forth therein (except as indicated in the notes thereto, and in the case of unaudited statements, as may be permitted by the rules of the SEC, and subject to normal year-end audit adjustments that will not be material in amount or effect), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein, or in the case of Parent SEC Reports filed after the date hereof, will fairly present, in all material respects, the results of operations, retained earnings (loss) and changes in financial position, as the case may be, of such companies for the periods set forth therein (except as indicated in the notes thereto, and in the case of unaudited statements, as may be permitted by the rules of the SEC, and subject to normal year-end audit adjustments that will not be material in amount or effect), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein (the "***Parent Financial Statements***").

(d) Parent has designed and maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of financial reporting, and, to the Knowledge of Parent, such system is effective in providing such assurance. Parent (i) maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) designed to ensure that information required to be disclosed by Parent in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms and, to the Knowledge of Parent, such disclosure controls and procedures are effective (ii) has disclosed, based on the most recent evaluation of its chief executive officer and its chief financial officer prior to the date hereof, to Parent's auditors and the Audit Committee of the Board of Directors of Parent (and made summaries of such disclosures available to the Company) (A) (i) any significant deficiencies in the design or operation of internal control over financial reporting that would adversely affect in any material respect Parent's ability to record, process, summarize and report financial information, and (ii) any material weakness in internal control over financial reporting, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Parent's internal controls over financial reporting. Each of Parent and its Subsidiaries have materially complied with or substantially addressed such deficiencies, material weaknesses or fraud. Parent is in compliance in all material respects with all effective provisions of the Sarbanes-Oxley Act.

(e) Each of the principal executive officer of Parent and the principal financial officer of Parent (or each former principal executive officer of Parent and each former principal financial officer of Parent, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act or Sections 302 and 906 of the Sarbanes-Oxley Act and the rules and regulations of the SEC promulgated thereunder with respect to the Parent SEC Reports, and the statements contained in such certifications were true and correct on the date such certifications were made. For purposes of this Section 3.5(e), "principal executive officer" and "principal financial officer" has the meanings given to such terms in the Sarbanes-Oxley Act. None of Parent or any of its Subsidiaries has outstanding, or has arranged any outstanding, "extensions of credit" to directors or executive officers in violation of Section 402 of the Sarbanes-Oxley Act.

(f) Neither Parent or any of its Subsidiaries nor, to the Knowledge of Parent, any director, officer, employee, or internal or external auditor of Parent or any of its Subsidiaries has received or otherwise had or obtained actual knowledge of any substantive material complaint, allegation, assertion or claim, whether written or oral, that Parent or any of its Subsidiaries has engaged in questionable accounting or auditing practices.

Section 3.6 Absence of Changes. Since September 30, 2018, Parent and each of its Subsidiaries have conducted their respective businesses in all material respects in the Ordinary Course of Business consistent with their past practices. Except as set forth (x) in the Parent SEC Reports, and (y) on Section 3.6 of the Parent Disclosure Schedule, after September 30, 2018 and on or before the date hereof:

(a) there has not been any change, event, circumstance or condition to the Knowledge of Parent that, individually or in the aggregate, has had, or would reasonably be expected to have, a Parent Material Adverse Effect;

(b) except as required as a result of a change in applicable Laws or GAAP or as disclosed in the notes to the Parent Financial Statements, there has not been any material change in any method of accounting or accounting practice by Parent or any of its Subsidiaries;

(c) there has not been any other action, event or occurrence that would have required the consent of the Company pursuant toSection 4.4(a) of this Agreement had such action, event or occurrence taken place after the execution and delivery of this Agreement;

(d) there has not been any (i) grant of or increase in any severance or termination pay to any employee, director or other service provider of Parent or its Subsidiaries, (ii) entry into any employment, consulting, deferred or equity compensation, retention, change in control, transaction bonus, severance or other similar plan or agreement (or any amendment to any such existing agreement) with any new or current employee, director or other service provider of Parent or any of its Subsidiaries, (iii) change in the compensation, bonus or other benefits payable or to become payable to its directors, officers, employees or consultants, except in the Ordinary Course of Business, or as required by any pre-existing plan or arrangement set forth in Section 3.6(d) of the Parent Disclosure Schedule, (iv) action to accelerate the vesting or payment of any compensation or benefit to any Parent employee, (v) adoption, modification or termination of any Parent Employee Program other than as required by applicable Law, or (vi) termination of any officers or key employees of Parent or any of its Subsidiaries; or

(e) Parent has not acquired or sold, pledged, leased, encumbered or otherwise disposed of any material property or assets or agreed to do any of the foregoing;

(f) Other than the grant of non-exclusive licenses in the Ordinary Course of Business, there has been no transfer (by way of a license or otherwise) of, or agreement to transfer to, any Person's rights to any of the Parent Intellectual Property;

(g) there has been no notice delivered to Parent of any claim of ownership by a third party of any of the Parent Intellectual Property, or of infringement by Parent of any Third Party Intellectual Property; and

(h) there has not been any binding agreement to do any of the foregoing.

Section 3.7 **Title to Assets**. Each of Parent and its Subsidiaries owns, and has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or assets and equipment used or held for use in its business or operations or purported to be owned by it. All of said assets are owned by Parent or a Subsidiary of Parent free and clear of any Encumbrances, except for: (i) any lien for current Taxes not yet due and payable or for Taxes that are being contested in good faith and for which adequate reserves have been made on Parent's audited consolidated balance sheet at September 30, 2018, (ii) minor liens that have arisen in the Ordinary Course of Business and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of Parent and its Subsidiaries, taken as a whole, and (iii) Encumbrances described in Section 3.7 of the Parent Disclosure Schedule.

Section 3.8 **Properties.**

(a) Section 3.8(a) of the Parent Disclosure Schedule contains a complete and correct list, as of the date hereof, of the Parent Leased Real Property, including with respect to each such Parent Lease the date of such Parent Lease and any material amendments thereto. With respect to each Parent Lease, except as would not, individually or in the aggregate, have a Parent Material Adverse Effect:

(i) the Parent Leases and the Parent Ancillary Lease Documents are valid and in full force and effect except to the extent they have previously expired or terminated in accordance with their terms. Parent has delivered to the Company full, complete and accurate copies of each of the Parent Leases and all Parent Ancillary Lease Documents described in Section 3.8(a) of the Parent Disclosure Schedule;

(ii) none of the Parent Leased Real Property is subject to any Encumbrance other than a Permitted Encumbrance;

(iii) none of Parent or its Subsidiaries, nor, to the Knowledge of Parent, any other party to any Parent Leases or Parent Ancillary Lease Documents is in breach or default, and, to the Knowledge of Parent, no event has occurred which, with notice or lapse of time, would constitute such a breach or default under the Parent Leases or any Parent Ancillary Lease Documents;

(iv) none of Parent or its Subsidiaries has assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any of its rights and interest in the leasehold or subleasehold under any of the Parent Leases or any Parent Ancillary Lease Documents in a manner that is material to Parent and that relates to the use or occupancy of all or any portion of the Parent Leased Real Property.

(b) None of Parent or its Subsidiaries has any Parent Owned Real Property.

Section 3.9 Intellectual Property.

(a) Section 3.9(a) of the Parent Disclosure Schedule contains a complete and accurate list of all (i) Patents owned by Parent or any of its Subsidiaries or exclusively licensed to Parent or any of its Subsidiaries ("***Parent Patents***"), registered and material unregistered Marks owned by Parent or any of its Subsidiaries ("***Parent Marks***") and registered owned by Parent or any of its Subsidiaries ("***Parent Copyrights***"), (ii) licenses, sublicenses or other agreements under which Parent or any of its Subsidiaries is granted rights by others in the Parent Intellectual Property ("***Parent In-Licenses***") (other than commercial off the shelf software or materials transfer agreements), and (iii) licenses, sublicenses or other agreements under which Parent or any of its Subsidiaries has granted rights to others in the Parent Intellectual Property ("***Parent Out-Licenses***"); provided that the Parent Patents, Parent Marks, Parent Copyrights, Parent In-Licenses and Parent Out-Licenses exclude all Patents, Marks, licenses, sublicenses and other agreements to be included in the Spinoff Assets.

(b) With respect to the Parent Intellectual Property (i) owned or purported to be owned by Parent or any of its Subsidiaries, Parent or one of its Subsidiaries exclusively owns such Parent Intellectual Property, and (ii) licensed to Parent or any of its Subsidiaries by a third party (other than commercial off the shelf software or materials transfer agreements), such Parent Intellectual Property (other than any Intellectual Property to be included in the Spinoff Assets) are the subject of a written license or other agreement; in the case of the foregoing clauses (i), and (ii) above, free and clear of all Encumbrances, other than Encumbrances resulting from the express terms of a Parent In-License or Parent Out- License or Permitted Encumbrances granted by Parent or one of its Subsidiaries.

(c) To the Knowledge of Parent, all Parent Patents, Parent Marks and Parent Copyrights are valid and enforceable.

(d) To the Knowledge of Parent, each Parent Patent that has been issued by, or registered with, or is the subject of an application filed with, as applicable, the U.S. Patent and Trademark Office or any similar office or agency anywhere in the world was issued, registered, or filed, as applicable, with the correct inventorship and there has been no known misjoinder or nonjoinder of inventors.

(e) No Parent Patent is now involved in any interference, reissue, re-examination or opposition proceeding.

(f) There are no pending or, to the Knowledge of Parent, threatened claims since January 1, 2016 against Parent or any of its Subsidiaries or any of their employees alleging that any of the operation of Parent's business or any activity by Parent or any of its Subsidiaries, infringes or violates (or in the past infringed or violated) any Third Party Intellectual Property or constitutes a misappropriation of (or in the past constituted a misappropriation of) any subject matter of any Intellectual Property of any person or entity or that any Parent Intellectual Property is invalid or unenforceable.

(g) To the Knowledge of Parent, the operation of Parent's business does not infringe or violate (or in the past infringed or violated) any Third Party Intellectual Property or constitutes a misappropriation of (or in the past constituted a misappropriation of) any subject matter of any Third Party Intellectual Property.

(h) Except with respect to fees payable to third party licensors pursuant to the Parent In-Licenses, none of Parent or any of its Subsidiaries has any obligation to compensate any person for the use of any Intellectual Property. Except as set forth in Section 3.9(h) of the Parent Disclosure Schedule, neither Parent nor any of its Subsidiaries has entered into any agreement to indemnify any other person against any claim of infringement or misappropriation of any Intellectual Property. There are no settlements, covenants not to sue, consents, judgments, or orders or similar obligations that: (i) restrict the rights of Parent or any of its Subsidiaries rights to use any Parent Intellectual Property, (ii) restrict the Parent or any of its Subsidiaries, in order to accommodate a third party's Intellectual Property, or (iii) permit third parties to use any Parent Intellectual Property (excluding any rights granted to any third parties pursuant to the Parent Out-Licenses).

(i) All former and current employees, consultants and contractors of Parent and its Subsidiaries who have been involved in the creation and/or development of any Parent Intellectual Property have executed written instruments with Parent or one or more of its Subsidiaries that assign to Parent all rights, title and interest in and to any and all Intellectual Property created and/or developed by such employee, consultant or contractor in the course of their employment or engagement with Parent or the applicable Subsidiary.

(j) To the Knowledge of Parent, (i) there is no, nor has there been any, infringement or violation by any person or entity of any Parent Intellectual Property owned by, or exclusively licensed to, Parent or any of its Subsidiaries, or the rights of Parent or any of its Subsidiaries therein or thereto and (ii) there is no, nor has there been any, misappropriation by any person or entity of any Parent Intellectual Property owned by, or exclusively licensed to, Parent or any of its Subsidiaries, or the subject matter thereof.

(k) Parent and each of its Subsidiaries has taken reasonable security measures to protect the secrecy, confidentiality and value of all Trade Secrets owned by Parent or any of its Subsidiaries or used or held for use by Parent or any of its Subsidiaries in Parent's business (the "***Parent Trade Secrets***").

(l) Following the Effective Time, the Surviving Corporation will have substantially similar rights and privileges in the Parent Intellectual Property as Parent had in the Parent Intellectual Property immediately prior to the Effective Time.

Section 3.10 Material Contracts. Section 3.10 of the Parent Disclosure Schedule is a correct and complete list of the following currently effective Parent Contracts (each, a "***Parent Material Contract***" and, collectively, "***Parent Material Contracts***"):

(a) each Parent Material Contract that constitutes the Parent Leases and the Parent Ancillary Lease Documents;

(b) each Parent Material Contract for the purchase of materials, supplies, goods, services, equipment or other assets for annual payments by Parent or any of its Subsidiaries of, or pursuant to which in the last year Parent or any of its Subsidiaries paid, in the aggregate, $100,000 or more;

(c) each Parent Material Contract for the sale of materials, supplies, goods, services, equipment or other assets for annual payments to Parent or any of its Subsidiaries of, or pursuant to which in the last year Parent or any of its Subsidiaries received, in the aggregate, $100,000 or more;

(d) each Parent Material Contract that relates to any partnership, joint venture, strategic alliance or other similar Contract;

(e) each Parent Material Contract relating to Indebtedness for borrowed money or the deferred purchase price of property (whether incurred, assumed, guaranteed or secured by any asset), except for Contracts relating to Indebtedness in an amount not exceeding $100,000 in the aggregate;

(f) each Parent Material Contract that provides for any employment, severance, retention, transaction bonus, change in control, consulting or other similar agreement between: (i) Parent or any of its Subsidiaries, on the one hand, and (ii) any employee, director or other individual service provider of Parent or its Subsidiaries, on the other hand, other than any such Contract that is terminable "at will" or without any obligation in excess of $10,000 on the part of Parent or any of its Subsidiaries to make any severance, bonus, termination, change in control or similar payment or to provide any other benefit with a value in excess of $10,000 (other than benefits required to be provided by applicable Law);

(g) each Parent Material Contract which by its terms limits in any respect (i) the localities in which all or any significant portion of the business and operations of Parent or any Affiliate of Parent (which will include the Surviving Corporation after the Effective Time), or (ii) the right of Parent or any Affiliate of Parent (which will include the Surviving Corporation after the Effective Time) to compete with any Person;

(h) each Parent Material Contract in respect of any Parent Intellectual Property that provides for annual payments of, or pursuant to which in the last year Parent or any of its Subsidiaries paid or received, in the aggregate, $100,000 or more;

(i) each Parent Material Contract containing any royalty, dividend or similar arrangement based on the revenues or profits of Parent or any of its Subsidiaries;

(j) each Parent Material Contract with any Governmental Authority;

(k) each Parent Material Contract with (a) an executive officer or director of Parent or any of its Subsidiaries or any of such executive officer's or director's immediate family members, (b) an owner of more than five percent (5%) of the voting power of the outstanding capital stock of Parent, or (c) to the Knowledge of Parent, any "related person" (within the meaning of Item 404 of Regulation S-K under the Securities Act) of any such officer, director or owner (other than Parent or its Subsidiaries);

(l) each Parent Material Contract that gives rise to any material payment or benefit as a result of the performance of this Agreement or any of the other Contemplated Transactions;

(m) each Parent Material Contract relating to the acquisition or disposition of any material interest in, or any material amount of, property or assets of Parent or any of its Subsidiaries or for the grant to any Person of any preferential rights to purchase any of their assets, other than in the Ordinary Course of Business; or

(n) any other each Parent Material Contract (or group of related agreements) the performance of which requires aggregate payments to or from Parent or any of its Subsidiaries in excess of $250,000.

Parent has delivered or made available to the Company accurate and complete (except for applicable redactions thereto) copies of all material written Parent Contracts, including all amendments thereto. There are no material Parent Contracts that are not in written form. Except as set forth on Section 3.10 of the Parent Disclosure Schedule, neither Parent nor any Subsidiary of Parent has, nor to the Knowledge of Parent, has any other party to a Parent Material Contract, breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the terms or conditions of any Parent Material Contract in such manner as would permit any other party to cancel or terminate any such Parent Material Contract, which has had or would reasonably be expected to have a Parent Material Adverse Effect. As to Parent and its Subsidiaries, as of the date of this Agreement, each Parent Material Contract is valid, binding, enforceable and in full force and effect, 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 consummation of the Contemplated Transactions will not (either alone or upon the occurrence of additional acts or events) result in any material payment or payments becoming due from Parent to any Person under any Parent Material Contract or give any Person the right to terminate or alter the provisions of any Parent Material Contract.

Section 3.11 Absence of Undisclosed Liabilities. As of the date hereof, neither Parent nor any Subsidiary of Parent has any Liability, individually or in the aggregate, except for: (a) Liabilities reflected or reserved against in the most recent consolidated balance sheet of Parent (or notes thereto) made available to the Company, (b) normal and recurring current Liabilities that have been incurred by Parent since the date of Parent's audited consolidated balance sheet at September 30, 2018 in the Ordinary Course of Business, none of which are material, (c) Liabilities for performance of obligations of Parent or any Subsidiary of Parent under Contracts (other than for breach thereof), (d) Liabilities described in Section 3.11 of the Parent Disclosure Schedule, (e) Liabilities incurred in connection with the Contemplated Transactions or (f) Liabilities to be included in the Spinoff Assets.

Section 3.12 Compliance with Laws. Each of Parent and each of its Subsidiaries is in compliance with all Laws or Orders, except where any such failure to be in compliance has not had, or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect or would not reasonably be expected to prevent or materially impair the consummation of the Contemplated Transactions. No investigation, inquiry, proceeding or similar action by any Governmental Authority with respect to Parent or any of its Subsidiaries is pending or, to the Knowledge of Parent, threatened in writing, nor has any Governmental Authority indicated in writing an intention to conduct the same which, in each case, would reasonably be expected to have a Parent Material Adverse Effect.

Section 3.13 Taxes and Tax Returns.

(a) Each material Tax Return required to be filed by, or on behalf of, Parent or any of its Subsidiaries, and each material Tax Return in which Parent or any of its Subsidiaries was required to be included, has been filed. Each such Tax Return is true, correct and complete in all material respects.

(b) Parent and each of its Subsidiaries (i) has paid (or has had paid on its behalf) all material Taxes due and owing, whether or not shown as due on any Tax Return, and (ii) has withheld and remitted to the appropriate Taxing Authority, or properly set aside, all material Taxes required to be withheld and paid in connection with any amounts paid or owing to or collected from any employee, independent contractor, supplier, creditor, stockholder, partner, member or other third party, and all Forms W-2 and 1099 required with respect thereto have been filed.

(c) The unpaid Taxes of Parent and its Subsidiaries (A) did not, as of September 30, 2018, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Parent Financial Statements (rather than in any notes thereto), and (B) will not exceed that reserve as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of Parent and its Subsidiaries in filing their Tax Returns.

(d) There are no material liens for Taxes (other than Taxes not yet due and payable or that are being contested in good faith pursuant to appropriate proceedings) upon any of the assets of Parent or any of its Subsidiaries.

(e) None of Parent or any of its Subsidiaries has waived any statute of limitations with respect to any material Taxes or agreed to any extension of the period for assessment or collection of any Taxes to a date after the Closing Date.

(f) No audit or other examination of any Tax Return of Parent or any of its Subsidiaries by any Taxing Authority has occurred within the past three (3) years and there is no material Tax claim, audit, suit, or administrative or judicial Tax proceeding now pending or presently in progress or threatened in writing by a taxing authority with respect to a material Tax Return of Parent or any of its Subsidiaries.

(g) None of Parent or any of its Subsidiaries has distributed stock of a corporation, or has had its stock distributed, in a transaction purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code within the five (5) year period ending on the date of this Agreement.

(h) None of Parent or any of its Subsidiaries (A) is or has ever been a member of a group of corporations that files or has filed (or has been required to file) consolidated, combined, or unitary Tax Returns, other than a group the common parent of which is or was Parent, or (B) has any liability for the Taxes of any person (other than Parent or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor pursuant to any Tax Sharing Agreement. None of Parent or any of its Subsidiaries is party to or has any obligation under any Tax Sharing Agreement.

(i) None of Parent or any of its Subsidiaries has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code at any time during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(j) None of Parent or any of its Subsidiaries has participated in a "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2) (or any predecessor provision).

(k) None of Parent or any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any:

(i) change in method of accounting made prior to the Closing Date, or use of an improper method of accounting for a taxable period ending on or prior to the Closing Date;

(ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law) executed prior to the Closing;

(iii) installment sale or open transaction disposition made prior to the Closing;

(iv) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax Law);

(v) transactions effected or investments made prior to the Closing that result in taxable income pursuant to Section 951(a) or 951A of the Code;

(vi) prepaid amount received (or deferred revenue accrued) prior to the Closing;

(vii) election with respect to income from the discharge of indebtedness under Section 108(i) of the Code made prior to the Closing; or

(viii) an election under Section 965 of the Code made prior to the Closing.

(l) No written claim has been made by any Taxing Authority in a jurisdiction where it does not file Tax Returns that Parent or any of its Subsidiaries is or may be subject to Tax or required to file a Tax Return in the jurisdiction.

(m) None of Parent or any Subsidiary (i) has, or has ever had, a permanent establishment in any country other than the country in which it is organized and resident, (ii) has engaged in a trade or business in any country other than the country in which it is organized and resident that subjected it to Tax in such country, and (iii) is, or has ever been, subject to Tax in a jurisdiction outside the country in which it is organized and resident.

(n) No Subsidiary of Parent that is incorporated in a non-US jurisdiction has an investment in "United States Property" within the meaning of Section 956(c) of the Code.

(o) All transactions between Parent and each of its Subsidiaries are at arm's-length, in compliance in all material respects with all applicable transfer pricing laws and regulations.

(p) As of the date hereof, neither Parent nor any of its Subsidiaries or their Affiliates has taken or agreed to take any action, nor does Parent or any of its Subsidiaries have knowledge of any fact or circumstance that could reasonably be expected to prevent the Merger, together with the issuance of shares of Parent Common Stock to the Company Stockholders, from qualifying as a reorganization within the meaning of Section 368(a) of the Code. To Parent's knowledge, there are no agreements, plans or other circumstances that would reasonably be expected to prevent the Merger, together with the issuance of shares of Parent Common Stock to the Company Stockholders, from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(q) Merger Sub is an entity newly formed for the purpose of participating in the Merger and is wholly owned by Parent, which is in "control" of Merger Sub within the meaning of Section 368(c) of the Code.

(r) Notwithstanding any provision in this Agreement to the contrary, Parent and Merger Sub do not make any (and shall not be construed to be making) representation or warranty as to the existence, amount, utilization or any other aspect of any net operating or capital loss, carryovers, carryforwards of business or other tax credits, tax basis, earnings and profits, or any other tax attribute (whether of Parent or any of its Subsidiaries) after the Closing, and the representations contained in Section 3.13 and Section 3.14 (solely as such representations relate to Taxes or Tax Returns) (the "***Parent Group Tax Representations***") shall constitute the sole and exclusive representations and warranties by Parent with respect to Taxes or Tax Returns. Other than the Parent Group Tax Representations in Section 3.13(h), Section 3.13(k), and Section 3.13(p), no Parent Group Tax Representation shall be deemed to apply directly or indirectly with respect to any taxable period after the Closing.

Section 3.14 Employee Benefit Programs.

(a) With respect to the Employee Programs maintained by Parent or its Subsidiaries prior to the Closing Date (the "***Parent Employee Programs***"), each such Parent Employee Program has been administered in all material respects in accordance with its terms and in accordance with ERISA, the Code and other applicable Laws. All payments and/or contributions required to have been made (under the provisions of any agreements or other governing documents or applicable Laws) with respect to all Parent Employee Programs, for all periods prior to the Closing Date, either have been made or have been accrued or otherwise adequately reserved on the Parent Financial Statements.

(b) No Parent Employee Program has been subject to Section 302 or Title IV of ERISA and/or Code Section 412, including a Multiemployer Plan, and Parent does not have any liability for any Employee Program that at any time has been subject to Title IV of ERISA or that is or has been maintained, contributed to, or required to be contributed to by an ERISA Affiliate of Parent. None of the Parent Employee Programs provides (or has ever provided) health care or any other welfare benefits to any employees after their employment is terminated (other than as required by part 6 of subtitle B of title I of ERISA or state continuation Laws to which the former employee pays all required premiums) or has ever promised to provide such post-termination benefits.

(c) Except as set forth in Section 3.14(c) of the Parent Disclosure Schedule, there is no Contract, plan, agreement or arrangement covering any employee of or other service provider to Parent or its Subsidiaries that, by itself or collectively, would give rise to any parachute payment subject to Section 280G of the Code, nor has Parent or its Subsidiaries made any such payment, and the consummation of the transactions contemplated herein shall not obligate Parent or its Subsidiaries to make any parachute payment subject to Section 280G of the Code.

(d) Parent has no Liability to gross-up or indemnify any individual with respect to any Tax imposed pursuant to Code Sections 409A or 4999.

(e) For purposes of this Section 3.14:

(i) An entity "maintains" an Employee Program if such entity sponsors, contributes to, or provides benefits under or through such Employee Program, or has any obligation (by agreement or under applicable Laws) to contribute to or provide benefits under or through such Employee Program, or if such Employee Program provides benefits to or otherwise covers or has covered employees of such entity (or their spouses, dependents, or beneficiaries).

(ii) An entity is an "ERISA Affiliate" of Parent if it would have ever been considered a single employer with Parent or any Subsidiary of Parent under ERISA Section 4001(b) or Code Section 414(b), (c), or (m).

(f) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 3.14(a) through Section 3.14(e) constitute the sole and exclusive representations and warranties of Parent and its Subsidiaries relating to ERISA and other Laws relating to employee benefits matters.

Section 3.15 Labor and Employment Matters.

(a) None of Parent or any of its Subsidiaries is a party to, or otherwise bound by, any collective bargaining agreement, contract, or other written agreement with a labor union or labor organization. Neither Parent nor any of its Subsidiaries is subject to, and during the past three (3) years there has not been, any charge, demand, petition, organizational campaign, or representation proceeding seeking to compel, require, or demand it to bargain with any labor union or labor organization nor is there pending any labor strike or lockout involving Parent or any of its Subsidiaries.

(b) Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect, (i) Parent and its Subsidiaries are in compliance in all material respects with all applicable Laws respecting labor, employment, fair employment practices, work safety and health, terms and conditions of employment, and wages and hours, including Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1967, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Americans with Disabilities Act, as amended, the Fair Labor Standards Act, as amended, and its state and local law equivalents, and the related rules and regulations adopted by those federal and state agencies responsible for the administration of such Laws, and other than normal accruals of wages during regular payroll cycles, there are no arrearages in the payment of wages, (ii) neither Parent nor any of its Subsidiaries is delinquent in any payments to any employee or to any independent contractors, consultants, temporary employees, leased employees or other servants or agents employed or used with respect to the operation of Parent's business and classified by Parent or any of its Subsidiaries as other than an employee or compensated other than through wages paid by Parent or any of its Subsidiaries through its respective payroll department ("***Parent Contingent Workers***"), for any wages, salaries, commissions, bonuses, fees or other direct compensation due with respect to any services performed for it to the date hereof or amounts required to be reimbursed to such employees or Parent Contingent Workers, (iii) there are no grievances, complaints or charges with respect to employment or labor matters (including allegations of employment discrimination, retaliation or unfair labor practices) pending or, to the Knowledge of Parent, threatened in writing against Parent or any of its Subsidiaries in any judicial, regulatory or administrative forum or under any private dispute resolution procedure, (iv) all employees of Parent and each of its Subsidiaries are employed at-will and no such employees are subject to any contract with Parent or any of its Subsidiaries or any policy or practice of Parent or any of its Subsidiaries providing for right of notice of termination of employment or the right to receive severance payments or similar benefits upon the termination of employment by Parent or any of its Subsidiaries, and (v) neither Parent nor any of its Subsidiaries has experienced a "plant closing," "business closing," or "mass layoff" as defined in the WARN Act or any similar Law affecting any site of employment of Parent or any of its Subsidiaries or one or more facilities or operating units within any site of employment or facility of Parent or any of its Subsidiaries, and, during the ninety (90)-day period preceding the date hereof, no employee has suffered an "employment loss," as defined in the WARN Act, with respect to Parent or any of its Subsidiaries, and (vi) there are no pending or, to the Knowledge of Parent, threatened or reasonably anticipated claims or actions against Parent under any workers' compensation policy or long-term disability policy.

(c) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 3.15(a) and Section 3.15(b) constitute the sole and exclusive representations and warranties of Parent and its Subsidiaries relating to collective bargaining matters and compliance with Labor Laws.

Section 3.16 Environmental Matters. Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect:

(a) Parent and its Subsidiaries are in compliance with all Environmental Laws applicable to their operations and use of the Parent Leased Real Property;

(b) none of Parent or any of its Subsidiaries has generated, transported, treated, stored, or disposed of any Hazardous Material, except in material compliance with all applicable Environmental Laws, and there has been no Release or threat of Release of any Hazardous Material by Parent or its Subsidiaries at or on the Parent Leased Real Property that requires reporting, investigation or remediation by Parent or its Subsidiaries pursuant to any Environmental Law; and

(c) none of Parent or any of its Subsidiaries has (i) received written notice under the citizen suit provisions of any Environmental Law, or (ii) been subject to or, to the Knowledge of Parent, threatened in writing with any governmental or citizen enforcement action with respect to any Environmental Law.

(d) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 3.16 constitute the sole and exclusive representations and warranties of Parent and its Subsidiaries relating to Environmental Laws.

Section 3.17 Insurance. Parent has made available to the Company accurate and complete copies of all material insurance policies relating to the business, assets, liabilities and operations of Parent and each Subsidiary of Parent, as of the date hereof. Each of such insurance policies is in full force and effect and Parent and each Subsidiary of Parent are in compliance in all material respects with the terms thereof. Other than customary end of policy notifications from insurance carriers, since January 1, 2015, neither Parent nor any Subsidiary of Parent has received any written notice regarding any actual or possible: (i) cancellation or invalidation of any insurance policy, (ii) refusal or denial of any coverage, reservation of rights or rejection of any material claim under any insurance policy, or (iii) material adjustment in the amount of the premiums payable with respect to any insurance policy.

Section 3.18 Books and Records. Each of the minute and record books of Parent has been made available to the Company and contains, in all material respects, complete and accurate minutes of all meetings of, and copies of all bylaws and resolutions passed by, or consented to in writing by, the directors (and any committees thereof) and stockholders of Parent, since January 1, 2012 and which are required to be maintained in such books under applicable Laws; all such meetings were duly called and held and all such bylaws and resolutions were duly passed or enacted.

Section 3.19 Transactions with Affiliates. Except as set forth in the Parent SEC Reports filed prior to the date of this Agreement, since the date of Parent's last proxy statement filed in 2015 with the SEC, no event has occurred that would be required to be reported by Parent pursuant to Item 404 of Regulation S-K promulgated by the SEC. Section 3.19 of the Parent Disclosure Schedule identifies each Person who is (or who may be deemed to be) an "affiliate" (as that term is used in Rule 12b-2 under the Exchange Act) of Parent as of the date of this Agreement.

Section 3.20 Legal Proceedings; Orders.

(a) There is no pending Legal Proceeding, and, to the Knowledge of Parent, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves Parent, any Subsidiary of Parent or any director or officer of Parent (in his or her capacity as such) or any of the material assets owned or used by Parent and/or any Subsidiary, or (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 Contemplated Transactions. To the Knowledge of Parent, no event has occurred, and no claim, dispute or other condition or circumstance exists, that will, or that would reasonably be expected to, give rise to or serve as a basis for the commencement of any such Legal Proceeding.

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

Section 3.21 Illegal Payments. None of Parent, any of its Subsidiaries, or, to the Knowledge of Parent, any of their respective directors, officers, employees or agents have, directly or indirectly, made, offered, promised or authorized any payment or gift of any money or anything of value to or for the benefit of any "***foreign official***" (as such term is defined in the FCPA), foreign political party or official thereof or candidate for foreign political office for the purpose of, in violation of applicable Laws: (i) influencing any act or decision of such foreign official in his, her or its official capacity, including a decision to fail to perform his, her or its official duties or functions, or (ii) inducing such foreign official to use his, her or its influence with any Governmental Authority to affect or influence any act or decision of such Governmental Authority, or to obtain an improper advantage in order to assist Parent, any of its Subsidiaries or any other Person in obtaining or retaining business for or with, or directing business to, Parent or any of its Subsidiaries. Notwithstanding any other provision of this Agreement, the representations and warranties contained in this Section 3.21 constitute the sole and exclusive representations and warranties of Parent and its Subsidiaries relating to compliance with Anticorruption Laws.

Section 3.22 Inapplicability of Anti-takeover Statutes. The Board of Directors of Parent and Merger Sub have taken and will take all actions necessary to ensure that the restrictions applicable to business combinations contained in Section 203 of the DGCL are, and will be, inapplicable to the execution, delivery and performance of this Agreement and the Parent Voting Agreements and to the consummation of the Merger and the other Contemplated Transactions.

Section 3.23 Vote Required. The affirmative vote of the holders of a majority of the shares of Parent Common Stock having voting power representing a majority of the outstanding shares of Parent Common Stock (which includes the Parent Preferred Stock on an as converted basis to Parent Common Stock), and the holders of a majority of the votes properly cast at the Parent Stockholder Meeting are the only votes of the holders of any class or series of Parent's capital stock necessary to approve the Parent Stockholder Proposals (the "***Parent Stockholder Approval***").

Section 3.24 No Financial Advisor. Except as set forth on Section 3.24 of the Parent Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage fee, finder's fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Merger or any of the other Contemplated Transactions based upon arrangements made by or on behalf of Parent or any Subsidiary of Parent.

Section 3.25 **Disclosure; Parent Information**. Assuming the accuracy of the representations made by the Company in Section 2.26, the Joint Proxy Statement/Prospectus will not, at the time of the mailing of the Joint Proxy Statement/Prospectus or any amendments or supplements thereto or at the time of the Parent Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Assuming the accuracy of the representations made by the Company in Section 2.26, the Form S-4 Registration Statement will not, at the time the Form S-4 Registration Statement is filed with the SEC or at the S-4 Effective Date, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, no representation is made by Parent with respect to the information that has been or will be supplied by the Company or any of its Representatives for inclusion in the Joint Proxy Statement/Prospectus.

Section 3.26 **No Other Representations or Warranties**. Parent hereby acknowledges and agrees that, except for the representations and warranties contained in this Agreement, neither the Company nor any of its Subsidiaries nor any other person on behalf of the Company or its Subsidiaries makes any express or implied representation or warranty with respect to the Company or its Subsidiaries or with respect to any other information provided to Parent, any of its Subsidiaries or their respective stockholders, Affiliates or Representatives in connection with the transactions contemplated hereby, and (subject to the express representations and warranties of the Company set forth in Article 2 (in each case as qualified and limited by the Company SEC Reports and the Company Disclosure Schedule)) none of Parent, its Subsidiaries or any of their respective stockholders, Affiliates or Representatives, has relied on any such information (including the accuracy or completeness thereof).

ARTICLE 4
CERTAIN COVENANTS OF THE PARTIES

Section 4.1 **Access and Investigation**. Subject to the terms of the Confidentiality Agreement which the Parties agree will continue in full force and effect following the date of this Agreement, during the period commencing on the date of this Agreement and ending at the earlier of the date of termination of this Agreement pursuant to Section 7.1 and the Effective Time (the "***Pre-Closing Period***"), upon reasonable notice, each Party shall, and shall use commercially reasonable efforts to cause such Party's Representatives to: (a) provide the other Party and such other Party's Representatives with reasonable access during normal business hours to such Party's Representatives, personnel and assets and to all existing books, records, work papers and other documents and information relating to such Party and its Subsidiaries, (b) provide the other Party and such other Party's Representatives with such copies of the existing books, records, Tax Returns, work papers, product data, and other documents and information relating to such Party and its Subsidiaries, and with such additional financial, operating and other data and information regarding such Party and its Subsidiaries as the other Party may reasonably request, and (c) permit the other Party's officers and other employees to meet, upon reasonable notice and during normal business hours, with the chief financial officer and other officers and managers of such Party responsible for such Party's financial statements and the internal controls of such Party to discuss such matters as the other Party may deem necessary or appropriate in order to enable the other Party to satisfy its obligations under the Sarbanes-Oxley Act and the rules and regulations relating thereto. Without limiting the generality of any of the foregoing, during the Pre-Closing Period, each Party shall promptly make available to the other Party with copies of:

(i) the unaudited quarterly consolidated balance sheets of such Party as of the end of each calendar quarter and the related unaudited quarterly consolidated statements of operations, statements of stockholders' equity and statements of cash flows for such calendar quarterly, which shall be delivered within forty-five (45) days after the end of such calendar quarter, or such longer periods as the Parties may agree to in writing;

(ii) all material operations and financial reports prepared by such Party for its senior management, including sales forecasts, marketing plans, development plans, discount reports, write-off reports, hiring reports and capital expenditure reports prepared for its management;

(iii) any written materials or communications sent by or on behalf of a Party to all of its stockholders;

(iv) any material notice, document or other communication sent by or on behalf of a Party to any party to any Parent Material Contract or Company Material Contract, as applicable, or sent to a Party by any party to any Parent Material Contract or Company Material Contract, as applicable (other than any communication that relates solely to routine commercial transactions between such Party and the other party to any such Parent Material Contract or Company Material Contract, as applicable, and that is of the type sent in the Ordinary Course of Business);

(v) any notice, report or other document filed with or otherwise furnished, submitted or sent to any Governmental Authority on behalf of a Party in connection with the Merger or any of the Contemplated Transactions;

(vi) any non-privileged notice, document or other written communication sent by or on behalf of, or sent to, a Party relating to any pending or threatened material Legal Proceeding involving or affecting such Party; and

(vii) any material notice, material report or other material document received by a Party from any Governmental Authority, other than in the Ordinary Course of Business.

Notwithstanding the foregoing, any Party may restrict the foregoing access (A) to the extent that any Law applicable to such party requires such Party to restrict or prohibit access to any such properties or information or as may be necessary to preserve the attorney-client privilege under any circumstances in which such privilege may be jeopardized by such disclosure or access, or (B) to the extent that such Party reasonably believes that allowing such access or furnishing such information would otherwise result in the disclosure of any trade secrets of third parties or violate any obligations existing on the date hereof with respect to confidentiality to any third party or otherwise breach, contravene or violate any effective Contract existing on the date hereof.

Section 4.2 Operation of Parent's Business.

(i) Except as set forth on Section 4.2 of the Parent Disclosure Schedule, as expressly required or permitted by this Agreement, as required by applicable Law or as agreed upon in writing by the Company, during the Pre-Closing Period: (i) Parent shall conduct its business and operations: (A) in the Ordinary Course of Business, and (B) in material compliance with all applicable Laws and compliance with the material requirements of all Contracts that constitute Parent Material Contracts, and (ii) Parent shall promptly notify the Company of: (A) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with any of the Contemplated Transactions, and (B) any material Legal Proceeding against, relating to, involving or otherwise affecting Parent that is commenced, or, to the Knowledge of Parent, threatened in writing against, Parent after the date of this Agreement.

Section 4.3 Operation of the Company's Business. Except as set forth on Section 4.3 of the Company Disclosure Schedule, as expressly required or permitted by this Agreement, as required by applicable Law or as agreed upon in writing by the Parent, during the Pre-Closing Period: (i) the Company shall conduct its business and operations: (A) in the Ordinary Course of Business, and (B) in material compliance with all applicable Laws and compliance with the material requirements of all Contracts that constitute Company Material Contracts, (ii) the Company shall use commercially reasonable efforts to preserve intact its current business organization, keep available the services of its current key employees, officers and other employees and maintain its relations and goodwill with all suppliers, customers, landlords, creditors, licensors, licensees, employees and other Persons having business relationships with the Company, and (iii) the Company shall promptly notify Parent of: (A) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with any of the Contemplated Transactions, and (B) any material Legal Proceeding against, relating to, involving or otherwise affecting the Company that is commenced, or, to the Knowledge of the Company, threatened against, the Company.

Section 4.4 Negative Obligations.

(a) Except (A) as expressly required by this Agreement, (B) as set forth in Section 4.4(a) of the Parent Disclosure Schedule, (C) as required by applicable Law, or (D) with the prior written consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed), at all times during the Pre-Closing Period, Parent shall not, nor shall it cause or permit any Subsidiary of Parent to, do any of the following:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of capital stock other than pursuant to the Contemplated Transactions;

(ii) amend the certificate of incorporation, bylaws or other charter or organizational documents of Parent or any Subsidiary of Parent, or effect or be a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction other than pursuant to the Contemplated Transactions;

(iii) form any new Subsidiary or acquire any equity interest or other interest in any other Person other than pursuant to the Contemplated Transactions;

(iv) lend money to any Person; incur or guarantee any Indebtedness for borrowed money; issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities; or guarantee any debt securities of others;

(v) make any capital expenditure or commitment in excess of $10,000 which would not be assumed in connection with the Spinoff;

(vi) other than in the Ordinary Course of Business or pursuant to the Contemplated Transactions, (A) adopt, establish or enter into any Parent Employee Program, (B) cause or permit any Parent Employee Program to be amended other than as required by Law or in order to make amendments for the purposes of Section 409A of the Code, subject to prior review and approval (with such approval not to be unreasonably withheld) by the Company, (C) hire any new employee or consultant, (D) grant, make or pay (or agree to pay) any severance, retention, change in control, bonus or profit-sharing or similar payment to, or increase the amount of the wages, salary, commissions, fringe benefits or other compensation or remuneration payable to, any of its directors, employees or consultants (other than any payment which is to be paid prior or in connection with the Closing), or (E) accelerate the time of payment or vesting of any non-equity benefits or compensation to any of its directors, employees or consultants;

(vii) acquire any material asset nor sell, lease or otherwise irrevocably dispose of any of its material assets or properties, nor grant any Encumbrance with respect to such assets or properties, except in the Ordinary Course of Business other than pursuant to the Contemplated Transactions;

(viii) make, change or revoke any material Tax election (other than Tax elections made in the Ordinary Course of Business); file any material amendment to any Tax Return; adopt or change any material accounting method in respect of Taxes; change any annual Tax accounting period; enter into any Tax Sharing Agreement; enter into any closing agreement with respect to any material Tax Liability; settle or compromise any claim, notice, audit report or assessment in respect of any material Tax Liability; apply for or enter into any ruling from any Taxing Authority with respect to Taxes; or consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(ix) enter into or amend any Parent Material Contract which is not to be included in the Spinoff Assets;

(x) commence a lawsuit other than (A) for routine collection of bills, (B) in such cases as Parent in good faith determines that failure to commence such lawsuit would result in the material impairment of a valuable aspect of Parent's and/or any Subsidiary of Parent's business, or (C) for a breach of this Agreement;

(xi) fail to make any material payment with respect to any of Parent's accounts payable or Indebtedness in a timely manner in accordance with the terms thereof and consistent with past practices;

(xii) hire any employees or engage any independent contractors, consultants or other Parent Contingent Workers;

(xiii) incur any Liability not expressly permitted pursuant to clauses (i) through (xii) of this Section 4.4(a), other than in the Ordinary Course of Business; or

(xiv) amend or modify the terms of the Separation Agreement (other than any amendment or modification required to address any comment from NASDAQ or the SEC), if such amendment or modification would materially, adversely affect Parent's rights thereunder or impose any material Liability on Parent or the Company after the Effective Time.

(xv) agree to take, take or permit any Subsidiary of Parent to take or agree to take, any of the actions specified in clauses (i) through (xiii) of this Section 4.4(a).

(b) Except (A) as expressly required by this Agreement, (B) as set forth in Section 4.4(b) of the Company Disclosure Schedule, (C) as required by applicable Law, or (D) with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), at all times during the Pre-Closing Period, the Company shall not, nor shall it cause or permit any Subsidiary of the Company to, do any of the following:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of capital stock; or repurchase, redeem or otherwise reacquire any shares of capital stock or other securities (except for shares of Company Common Stock from terminated employees of the Company) other than pursuant to the Contemplated Transactions;

(ii) except for (A) contractual commitments in place at the time of this Agreement, (B) as set forth in Section 4.4(b)(ii) of the Company Disclosure Schedule or (C) pursuant to the Contemplated Transactions, sell, issue or grant, or authorize the issuance of, or make any commitments to do any of the foregoing: (i) any capital stock or other security (except for Company Common Stock issued upon the valid exercise of outstanding Company Stock Options, Company Warrants or Company Convertible Notes), (ii) any option, warrant or right to acquire any capital stock or any other security, or (iii) any instrument convertible into or exchangeable for any capital stock or other security;

(iii) amend the certificate of incorporation, bylaws or other charter or organizational documents of the Company or any Subsidiary of the Company, or effect or be a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction other than pursuant to the Contemplated Transactions;

(iv) form any Subsidiary or acquire any equity interest or other interest in any other Person;

(v) lend money to any Person; incur or guarantee any Indebtedness for borrowed money; issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities; guarantee any debt securities of others;

(vi) or make any capital expenditure or commitment in excess of $250,000 other than in the Ordinary Course of Business;

(vii) other than in the Ordinary Course of Business, (A) adopt, establish or enter into any Company Employee Program, (B) cause or permit any Company Employee Program to be amended other than as required by Law or in order to make amendments for the purposes of Section 409A of the Code, subject to prior review and approval (with such approval not to be unreasonably withheld) by Parent, (C) hire any new employee or consultant, (D) grant, make or pay (or agree to pay) any severance, retention, change in control, bonus or profit-sharing or similar payment to, or increase the amount of the wages, salary, commissions, fringe benefits or other compensation or remuneration payable to, any of its directors, employees or consultants, or (E) accelerate the time of payment or vesting of any benefits or compensation to any of its directors, employees or consultants;

(viii) acquire any material asset nor sell, lease or otherwise irrevocably dispose of any of its material assets or properties, nor grant any Encumbrance with respect to such assets or properties, except in the Ordinary Course of Business;

(ix) make, change or revoke any material Tax election (other than Tax elections made in the Ordinary Course of Business); file any material amendment to any Tax Return; adopt or change any material accounting method in respect of Taxes; change any annual Tax accounting period; enter into any Tax Sharing Agreement; enter into any closing agreement with respect to any material Tax Liability; settle or compromise any claim, notice, audit report or assessment in respect of any material Tax Liability; apply for or enter into any ruling from any Taxing Authority with respect to Taxes; or consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(x) enter into, amend or terminate any Company Material Contract, or amend or terminate any material Company Permit other than in the Ordinary Course of Business;

(xi) commence a lawsuit other than (A) for routine collection of bills, (B) in such cases as the Company in good faith determines that failure to commence such lawsuit would result in the material impairment of a valuable aspect of the Company's and/or any Subsidiary of the Company's business, or (C) for a breach of this Agreement;

(xii) fail to make any material payment with respect to any of the Company's accounts payable or Indebtedness in a timely manner in accordance with the terms thereof and consistent with past practices;

(xiii) incur any Liability not expressly permitted pursuant to clauses (i) through (xii) of this Section 4.4(b), other than in the Ordinary Course of Business;

(xiv) issue any shares of Company Preferred Stock or any other security convertible into or exercisable or exchangeable for shares of Company Preferred Stock; or

(xv) agree to take, take or permit any Subsidiary of the Company to take, any of the actions specified in clauses (i) through (xiv) of this Section 4.4(b).

Section 4.5 Mutual Non-Solicitation.

(a) No Solicitation by the Company.

(i) Except as expressly permitted by this Section 4.5(a), during the Pre-Closing Period, none of the Company or any Representative of the Company shall directly or indirectly (A) whether publicly or otherwise, initiate, solicit, seek, induce, cause or knowingly encourage or support any inquiries, proposals or offers that constitute or may reasonably be expected to lead to, a Company Acquisition Proposal (as defined below), (B) enter into, continue, maintain, conduct or otherwise engage or participate in, or knowingly facilitate, any discussions or negotiations regarding, or afford any Person other than Parent access to the Company's or any of its Subsidiaries' properties or assets, books and records, Contracts, personnel or otherwise furnish any nonpublic information relating to the Company or any of its Subsidiaries to any Person in connection with or for the purpose of encouraging, inducing or facilitating any inquiries, proposals or offers that constitute, or may reasonably be expected to lead to, a Company Acquisition Proposal (other than, solely in response to an unsolicited inquiry, solely to refer the inquiring person to this Section 4.5(a) and to limit its conversation or other communication exclusively to such referral), (C) enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement or other similar type of Contract contemplating or otherwise providing for or relating to a Company Acquisition Proposal or any inquiry, proposal or offer that may reasonably be expected to lead to a Company Acquisition Proposal, or enter into any Contract or agreement in principle requiring the Company to abandon, terminate or fail to consummate the transactions contemplated hereby, (D) take any action to make the provisions of any takeover statute or any similar provision contained in the organizational documents of the Company inapplicable to any transactions contemplated by a Company Acquisition Proposal, (E) amend, or grant a waiver or release under, any standstill or similar agreement with respect to any capital stock of the Company, or (F) publicly or otherwise, resolve, propose or agree to do any of the foregoing described in clauses (A) through (F); provided, however, that prior to the earlier of the approval of the Company Stockholder Proposals at the Company Stockholder Meeting or the termination of this Agreement in accordance with Article 7, the Company may take the following actions in response to an unsolicited bona fide written Company Acquisition Proposal received after the date hereof that the Board of Directors of the Company has determined, in good faith, after consultation with its outside counsel and financial advisors, constitutes, or would reasonably be expected to lead to, a Company Superior Offer: (1) furnish nonpublic information regarding the Company to the third party making the Company Acquisition Proposal (a "***Company Qualified Bidder***"), (2) engage in discussions or negotiations with the Company Qualified Bidder and its Representatives with respect to such Company Acquisition Proposal, and (3) amend, or grant a waiver or release under, any standstill or similar agreement with respect to any capital stock of the Company with any Company Qualified Bidder solely to the extent necessary to permit a third party to make, on a confidential basis to the Board of Directors of the Company, a Company Acquisition Proposal; provided that in any such case (w) the Company receives from the Company Qualified Bidder an executed confidentiality agreement the terms of which are not less restrictive to such Person and its Representatives than those contained in the Confidentiality Agreement, and containing additional provisions that expressly permit the Company to comply with the terms of this Section 4.5(a) (a "***Company Acceptable Confidentiality Agreement***") (a copy of such Company Acceptable Confidentiality Agreement shall promptly, and in any event within twenty-four (24) hours, be provided to Parent for informational purposes only), (x) the Company contemporaneously supplies to Parent any such nonpublic information or access to any such nonpublic information to the extent it has not been previously provided or made available to Parent, (y) the Company has not breached this Section 4.5(a), and (z) the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel and financial advisors, that taking such actions would be required to comply with the fiduciary duties of the Board of Directors of the Company under applicable Laws. From and after the date of this Agreement, the Company shall use its reasonable best efforts to enforce, and cause its Subsidiaries and Representatives to enforce, any confidentiality provisions or provisions of similar effect to which it or any of its Subsidiaries is a party or of which it or any of its Subsidiaries is a beneficiary. Any violation of the restrictions contained in this Section 4.5(a) by any Representatives of the Company or any of its Subsidiaries shall be deemed to be a breach of this Section 4.5(a) by the Company.

(ii) For purposes of this Agreement,

(A) "***Company Acquisition Proposal***" means any inquiry, proposal, indication of interest or offer from any Person or group (the term "group" for purposes of this Agreement having the meaning assigned thereto in Section 13(d) of the Exchange Act and the rules and regulations thereunder), in a single transaction or series of related transactions, relating to (i) a merger, tender offer, recapitalization, reorganization, business combination, liquidation, dissolution, share exchange, arrangement or consolidation, or any similar transaction involving the Company, (ii) a sale, lease, exchange, mortgage, pledge, transfer or other acquisition of fifteen percent (15%) or more of the assets of the Company (including the acquisition of securities in any Subsidiary of the Company), including pursuant to a license or joint venture, or to which fifteen percent (15%) or more of the Company's revenues or earnings are attributable, (iii) an issuance by the Company of securities representing fifteen percent (15%) or more of the voting power of the Company, or (iv) a purchase, tender offer or other acquisition (including by way of merger, consolidation, share exchange, arrangement, consolidation or otherwise) of beneficial ownership (the term "beneficial ownership" for purposes of this Agreement having the meaning assigned thereto in Section 13(d) of the Exchange Act and the rules and regulations thereunder) of securities representing fifteen percent (15%) or more of the voting power of the Company (including securities of the Company currently beneficially owned by such Person); provided, however, that the term "Company Acquisition Proposal" shall not include the Merger or the other transactions expressly contemplated by this Agreement; and

(B) "***Company Superior Offer***" shall mean an unsolicited bona fide Company Acquisition Proposal (with all references to "fifteen percent (15%)" in the definition of Company Acquisition Proposal being treated as references to "one hundred percent (100%)" for these purposes) made by a third party after the date hereof that the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel and financial advisor, and after taking into account all financial, legal, regulatory, and other aspects of such Company Acquisition Proposal, (1) is more favorable from a financial point of view to the Company Stockholders than as provided hereunder (including any changes to the terms of this Agreement proposed by Parent in response to such Company Superior Offer pursuant to and in accordance with Section 4.5(a)(iv), or otherwise), (2) is not subject to any financing condition (and if financing is required, such financing is then fully committed to the third party), (3) is reasonably capable of being completed on the terms proposed without unreasonable delay, and (4) includes termination rights exercisable by the Company on terms no less favorable to the Company than the terms set forth in this Agreement, all from a third party capable of performing such terms.

(iii) Except as otherwise expressly provided in Section 4.5(a)(iv), neither the Board of Directors of the Company nor any committee of the Board of Directors of the Company shall (A) fail to make, withhold, withdraw, qualify, amend, change or resolve or publicly propose or announce its intention to withhold, withdraw, qualify, amend or change in a manner adverse to Parent, the Company Board Recommendation, (B) fail to recommend against acceptance of a tender or exchange offer within ten (10) Business Days after commencement, (C) adopt, approve, endorse, recommend or declare advisable, or resolve or publicly propose to or announce its intention to adopt, approve, endorse, recommend or declare advisable, any Company Acquisition Proposal, or (D) make any public statement inconsistent with the Company Board Recommendation (any action described in this sentence being referred to as a "***Company Change of Recommendation***").

(iv) Notwithstanding the foregoing, provided that the Company shall not have breached its obligations under this Section 4.5(b), the Board of Directors of the Company may effect a Company Change of Recommendation in the case of a Company Superior Offer, or may terminate this Agreement in order to enter into a definitive agreement with respect to a Company Superior Offer pursuant to Section 7.1(k), if prior to taking any such action:

(A) the Board of Directors of the Company determines in good faith, after consultation with outside legal counsel and financial advisors, that a Company Change of Recommendation is required in order to comply with its fiduciary duties under applicable Laws based upon the receipt of a Company Acquisition Proposal after the date hereof that has not been withdrawn that the Board of Directors of the Company determines in good faith, after consultation with outside legal counsel and financial advisors, constitutes a Company Superior Offer, but only at a time that is prior to the approval of the Company Stockholder Proposals at the Company Stockholder Meeting and is after 11:59 pm, New York City time, on the fourth Business Day following Parent's receipt of written notice (a "***Company Change of Recommendation Notice***") advising Parent that the Board of Directors of the Company desires to effect a Company Change of Recommendation or terminate this Agreement in order to enter into a definitive agreement with respect to such the Company Superior Offer pursuant to Section 7.1(j) (and the manner and timing in which it intends to do so, and specifying the identity of the Person making the Company Acquisition Proposal), unredacted written copies of all proposed transaction agreements relating to such the Company Acquisition Proposal and any other materials provided by such Person in connection with such the Company Acquisition Proposal (such four (4) Business Day period, the "***Company Notice Period***");

(B) the Company provides Parent with a reasonable opportunity to make adjustments in the terms and conditions of this Agreement and negotiates (and causes its Representatives to negotiate) in good faith with Parent and its Representatives with respect thereto during the Company Notice Period, in each case as would enable the Board of Directors of the Company or committee thereof to conclude that the Company Acquisition Proposal that was determined to be a Company Superior Offer is no longer a Company Superior Offer; and

(C) following the end of the Company Notice Period, the Board of Directors of the Company determines in good faith, after consultation with outside legal counsel and financial advisors, that after considering the terms of any revised terms proposed by the by Parent, the failure to effect a Company Change of Recommendation or terminate this Agreement in order to enter into a definitive agreement with respect to a Company Superior Offer pursuant to Section 7.1(j) is still required in order to comply with its fiduciary duties under applicable Laws.

Any changes to the financial terms or other material terms of such the Company Superior Offer occurring prior to a Company Change of Recommendation pursuant to this Section 4.5(a)(iv) shall require the Company to provide to Parent a new Company Change of Recommendation Notice and a new Company Notice Period and to comply with the requirements of this Section 4.5(a)(iv) with respect to each such Company Change of Recommendation Notice, except that the references to the "fourth Business Day" shall be deemed to be the "later of (1) the second Business Day, and (2) the period remaining under the original four (4) Business Day Company Notice Period immediately prior to the delivery of such notice pursuant to this sentence," during which the Board of Directors of the Company shall not make a Company Change of Recommendation or terminate this Agreement pursuant to Section 7.1(j) prior to the end of any such period as so extended. Any Company Change of Recommendation shall not change the approval of this Agreement or any other approval of the Board of Directors of the Company, including in any respect that would have the effect of causing any state (including Delaware) corporate takeover statute or other similar statute to be applicable to the transactions contemplated hereby or thereby, including the Merger.

(v) Nothing in this Section 4.5(a) shall prohibit the Company from complying with Rule 14e-2 or Rule 14d-9 promulgated under the Exchange Act with regard to a Company Acquisition Proposal, respectively, or from the Board of Directors of the Company making any disclosure to the Company Stockholders if, in the good faith judgment of the Board of Directors of the Company, after consultation with its outside legal counsel, that taking such action or making such disclosure would be required to comply with its fiduciary duties under applicable Laws; provided that in any event the Board of Directors of the Company shall not make or resolve to make a Company Change of Recommendation except in accordance with Section 4.5(a)(iv) or otherwise take, agree or resolve to take any action prohibited or governed by this Section 4.5(a) except in accordance with this Section 4.5(a).

(vi) Notwithstanding anything to the contrary set forth in this Agreement, the Board of Directors of the Company may effect a Company Change of Recommendation in response to a Company Intervening Event at any time prior to obtaining the Company Stockholder Approval in the event that the Board of Directors of the Company determines (after consultation with its outside legal counsel) that a Company Change of Recommendation in response to such Company Intervening Event is required in order to comply with its fiduciary duties under applicable Laws; provided that, prior to effecting a Company Change of Recommendation pursuant to this Section 4.5(a)(vi), the Board of Directors of the Company shall have given Parent at least four (4) business days' notice of its intention to effect a Company Change of Recommendation pursuant to this Section 4.5(a)(vi) (which notice shall include the reason (in reasonable detail) for such Company Change of Recommendation) and, if requested by Parent, the Company shall have met and negotiated in good faith with Parent regarding modifications to the terms and conditions of this Agreement so that the Board of Directors of the Company no longer determines that a Company Change of Recommendation in response to such Company Intervening Event is required in order to comply with its fiduciary duties under applicable Laws.

(b) No Solicitation by Parent.

(i) Except as expressly permitted by this Section 4.5(b), during the Pre-Closing Period, none of Parent, its Subsidiaries or any Representatives of Parent or any of its Subsidiaries shall directly or indirectly (A) whether publicly or otherwise, initiate, solicit, seek, induce, cause or knowingly encourage or support any inquiries, proposals or offers that constitute or may reasonably be expected to lead to, a Parent Acquisition Proposal (as defined below), (B) enter into, continue, maintain, conduct or otherwise engage or participate in, or knowingly facilitate, any discussions or negotiations regarding, or afford any Person other than the Company access to Parent's or any of its Subsidiaries' properties or assets, books and records, Contracts, personnel or otherwise furnish any nonpublic information relating to Parent or any of its Subsidiaries to any Person in connection with or for the purpose of encouraging, inducing or facilitating any inquiries, proposals or offers that constitute, or may reasonably be expected to lead to, a Parent Acquisition Proposal (other than, solely in response to an unsolicited inquiry, solely to refer the inquiring person to this Section 4.5(b) and to limit its conversation or other communication exclusively to such referral), (C) enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement or other similar type of Contract contemplating or otherwise providing for or relating to a Parent Acquisition Proposal or any inquiry, proposal or offer that may reasonably be expected to lead to a Parent Acquisition Proposal, or enter into any Contract or agreement in principle requiring Parent to abandon, terminate or fail to consummate the transactions contemplated hereby, (D) take any action to make the provisions of any takeover statute or any similar provision contained in the organizational documents of Parent inapplicable to any transactions contemplated by a Parent Acquisition Proposal, (E) amend, or grant a waiver or release under, any standstill or similar agreement with respect to any capital stock of Parent, or (F) publicly or otherwise, resolve, propose or agree to do any of the foregoing described in clauses (A) through (F); provided, however, that prior to the earlier of the approval of the Parent Stockholder Proposals at the Parent Stockholder Meeting or the termination of this Agreement in accordance with Article 7, Parent may take the following actions in response to an unsolicited bona fide written Parent Acquisition Proposal received after the date hereof that the Board of Directors of Parent has determined, in good faith, after consultation with its outside counsel and financial advisors, constitutes, or would reasonably be expected to lead to, a Parent Superior Offer: (1) furnish nonpublic information regarding Parent to the third party making the Parent Acquisition Proposal (a "***Parent Qualified Bidder***"), (2) engage in discussions or negotiations with the Parent Qualified Bidder and its Representatives with respect to such Parent Acquisition Proposal, and (3) amend, or grant a waiver or release under, any standstill or similar agreement with respect to any capital stock of Parent with any Parent Qualified Bidder solely to the extent necessary to permit a third party to make, on a confidential basis to the Board of Directors of Parent, a Parent Acquisition Proposal; provided that in any such case (w) Parent receives from the Parent Qualified Bidder an executed confidentiality agreement the terms of which are not less restrictive to such Person and its Representatives than those contained in the Confidentiality Agreement, and containing additional provisions that expressly permit Parent to comply with the terms of this Section 4.5(b) (a "***Parent Acceptable Confidentiality Agreement***") (a copy of such Parent Acceptable Confidentiality Agreement shall promptly, and in any event within twenty-four (24) hours, be provided to the Company for informational purposes only), (x) Parent contemporaneously supplies to the Company any such nonpublic information or access to any such nonpublic information to the extent it has not been previously provided or made available to the Company, (y) Parent has not breached this Section 4.5(b), and (z) the Board of Directors of Parent determines in good faith, after consultation with its outside legal counsel and financial advisors, that taking such actions would be required to comply with the fiduciary duties of the Board of Directors of Parent under applicable Laws. From and after the date of this Agreement, Parent shall use its reasonable best efforts to enforce, and cause its Subsidiaries and Representatives to enforce, any confidentiality provisions or provisions of similar effect to which it or any of its Subsidiaries is a party or of which it or any of its Subsidiaries is a beneficiary. Any violation of the restrictions contained in this Section 4.5(b) by any Representatives of Parent or any of its Subsidiaries shall be deemed to be a breach of this Section 4.5(b) by Parent.

(ii) For purposes of this Agreement,

(A) "***Parent Acquisition Proposal***" means any inquiry, proposal, indication of interest or offer from any Person or group (the term "group" for purposes of this Agreement having the meaning assigned thereto in Section 13(d) of the Exchange Act and the rules and regulations thereunder), in a single transaction or series of related transactions, relating to (i) a merger, tender offer, recapitalization, reorganization, business combination, liquidation, dissolution, share exchange, arrangement or consolidation, or any similar transaction involving Parent or its Subsidiaries, (ii) a sale, lease, exchange, mortgage, pledge, transfer or other acquisition of fifteen percent (15%) or more of the assets of Parent and its Subsidiaries, taken as a whole (including the acquisition of securities in any Subsidiary of Parent), including pursuant to a license or joint venture, or to which fifteen percent (15%) or more of Parent's and its Subsidiaries' consolidated revenues or earnings are attributable, (iii) an issuance by Parent of securities representing fifteen percent (15%) or more of the voting power of Parent, or (iv) a purchase, tender offer or other acquisition (including by way of merger, consolidation, share exchange, arrangement, consolidation or otherwise) of beneficial ownership (the term "beneficial ownership" for purposes of this Agreement having the meaning assigned thereto in Section 13(d) of the Exchange Act and the rules and regulations thereunder) of securities representing fifteen percent (15%) or more of the voting power of Parent (including securities of Parent currently beneficially owned by such Person); provided, however, that the term "Parent Acquisition Proposal" shall not include the Merger or the other transactions contemplated by this Agreement; and

(B) "***Parent Superior Offer***" shall mean an unsolicited bona fide Parent Acquisition Proposal (with all references to "fifteen percent (15%)" in the definition of Parent Acquisition Proposal being treated as references to "one hundred percent (100%)" for these purposes) made by a third party after the date hereof that the Board of Directors of Parent determines in good faith, after consultation with its outside legal counsel and financial advisor, and after taking into account all financial, legal, regulatory, and other aspects of such Parent Acquisition Proposal, (1) is more favorable from a financial point of view to the Parent Stockholders than as provided hereunder (including any changes to the terms of this Agreement proposed by the Company in response to such Parent Superior Offer pursuant to and in accordance with Section 4.5(b)(iv) or otherwise), (2) is not subject to any financing condition (and if financing is required, such financing is then fully committed to the third party), (3) is reasonably capable of being completed on the terms proposed without unreasonable delay, and (4) includes termination rights exercisable by Parent on terms no less favorable to Parent than the terms set forth in this Agreement, all from a third party capable of performing such terms.

(iii) Except as otherwise expressly provided in Section 4.5(b)(iv), neither the Board of Directors of Parent nor any committee of the Board of Directors of Parent shall (A) fail to make, withhold, withdraw, qualify, amend, change or resolve or publicly propose or announce its intention to withhold, withdraw, qualify, amend or change in a manner adverse to the Company, the Parent Recommendation, (B) fail to recommend against acceptance of a tender or exchange offer within ten (10) Business Days after commencement, (C) adopt, approve, endorse, recommend or declare advisable, or resolve or publicly propose to or announce its intention to adopt, approve, endorse, recommend or declare advisable, any Parent Acquisition Proposal, or (D) make any public statement inconsistent with the Parent Recommendation (any action described in this sentence being referred to as a "***Parent Change of Recommendation***").

(iv) Notwithstanding the foregoing, provided that Parent shall not have breached its obligations under this Section 4.5(b), the Board of Directors of Parent may effect a Parent Change of Recommendation in the case of a Parent Superior Offer, or may terminate this Agreement in order to enter into a definitive agreement with respect to a Parent Superior Offer pursuant to Section 7.1(k), if prior to taking any such action:

(A) the Board of Directors of Parent determines in good faith, after consultation with outside legal counsel and financial advisors, that a Parent Change of Recommendation is required in order to comply with its fiduciary duties under applicable Laws based upon the receipt of a Parent Acquisition Proposal after the date hereof that has not been withdrawn that the Board of Directors of Parent determines in good faith, after consultation with outside legal counsel and financial advisors, constitutes a Parent Superior Offer, but only at a time that is prior to the approval of the Parent Stockholder Proposals at the Parent Stockholder Meeting and is after 11:59 pm, New York City time, on the fourth Business Day following the Company's receipt of written notice (a "***Parent Change of Recommendation Notice***") advising the Company that the Board of Directors of Parent desires to effect a Parent Change of Recommendation or terminate this Agreement in order to enter into a definitive agreement with respect to such Parent Superior Offer pursuant to Section 7.1(k) (and the manner and timing in which it intends to do so, and specifying the identity of the Person making the Parent Acquisition Proposal), unredacted written copies of all proposed transaction agreements relating to such Parent Acquisition Proposal and any other materials provided by such Person in connection with such Parent Acquisition Proposal (such four (4) Business Day period, the "***Parent Notice Period***");

(B) Parent provides the Company with a reasonable opportunity to make adjustments in the terms and conditions of this Agreement and negotiates (and causes its Representatives to negotiate) in good faith with the Company and its Representatives with respect thereto during the Parent Notice Period, in each case as would enable the Board of Directors of Parent or committee thereof to conclude that the Parent Acquisition Proposal that was determined to be a Parent Superior Offer is no longer a Parent Superior Offer; and

(C) following the end of the Parent Notice Period, the Board of Directors of Parent determines in good faith, after consultation with outside legal counsel and financial advisors, that after considering the terms of any revised terms proposed by the by the Company, the failure to effect a Parent Change of Recommendation or terminate this Agreement in order to enter into a definitive agreement with respect to a Parent Superior Offer pursuant to Section 7.1(k) is still required in order to comply with its fiduciary duties under applicable Laws.

Any changes to the financial terms or other material terms of such Parent Superior Offer occurring prior to a Parent Change of Recommendation pursuant to this Section 4.5(b)(iv) shall require Parent to provide to the Company a new Parent Change of Recommendation Notice and a new Parent Notice Period and to comply with the requirements of this Section 4.5(b)(iv) with respect to each such Parent Change of Recommendation Notice, except that the references to the "fourth Business Day" shall be deemed to be the "later of (1) the second Business Day, and (2) the period remaining under the original four (4) Business Day Parent Notice Period immediately prior to the delivery of such notice pursuant to this sentence," during which the Board of Directors of Parent shall not make a Parent Change of Recommendation or terminate this Agreement pursuant to Section 7.1(k) prior to the end of any such period as so extended. Any Parent Change of Recommendation shall not change the approval of this Agreement or any other approval of the Board of Directors of Parent, including in any respect that would have the effect of causing any state (including Delaware) corporate takeover statute or other similar statute to be applicable to the transactions contemplated hereby or thereby, including the Merger.

(v) Nothing in this Section 4.5(b) shall prohibit Parent from complying with Rule 14e-2 or Rule 14d-9 promulgated under the Exchange Act with regard to a Parent Acquisition Proposal, respectively, or from the Board of Directors of Parent making any disclosure to the Parent Stockholders if, in the good faith judgment of the Board of Directors of Parent, after consultation with its outside legal counsel, that taking such action or making such disclosure would be required to comply with its fiduciary duties under applicable Laws; provided that in any event the Board of Directors of Parent shall not make or resolve to make a Parent Change of Recommendation except in accordance with Section 4.5(b)(iv) or otherwise take, agree or resolve to take any action prohibited or governed by this Section 4.5(b) except in accordance with this Section 4.5(b).

(vi) Notwithstanding anything to the contrary set forth in this Agreement, the Board of Directors of Parent may effect a Parent Change of Recommendation in response to a Parent Intervening Event at any time prior to obtaining the Parent Stockholder Approval in the event that the Board of Directors of Parent determines (after consultation with its outside legal counsel) that a Parent Change of Recommendation in response to such Parent Intervening Event is required in order to comply with its fiduciary duties under applicable Laws; provided that, prior to effecting a Parent Change of Recommendation pursuant to this Section 4.5(b)(vi), the Board of Directors of Parent shall have given the Company at least four (4) business days' notice of its intention to effect a Parent Change of Recommendation pursuant to this Section 4.5(b)(vi) (which notice shall include the reason (in reasonable detail) for such Parent Change of Recommendation) and, if requested by the Company, Parent shall have met and negotiated in good faith with the Company regarding modifications to the terms and conditions of this Agreement so that the Board of Directors of Parent no longer determines that a Parent Change of Recommendation in response to such Parent Intervening Event is required in order to comply with its fiduciary duties under applicable Laws.

(c) Both the Company and Parent shall notify the other no later than twenty-four (24) hours after receipt of any Company Acquisition Proposal or Parent Acquisition Proposal or any inquiries, discussions, negotiations, proposals, expressions of interest or requests for information that may reasonably be expected to lead to a Company Acquisition Proposal or Parent Acquisition Proposal, respectively, and any such notice shall be made orally or in writing and shall indicate in reasonable detail the terms and conditions of such proposal, inquiry, contact or request, including price, and the identity of the offeror, and shall be accompanied by a copy of such Company Acquisition Proposal or Parent Acquisition Proposal, as applicable, inquiry, proposal, expression of interest or request (if written). If the Company is in receipt of a Company Acquisition Proposal, the Company shall notify Parent, in writing, of any decision of the Board of Directors of the Company or any committee thereof as to whether to consider any Company Acquisition Proposal or to enter into discussions or negotiations concerning any Company Acquisition Proposal or to provide nonpublic information with respect to such Company Acquisition Proposal to any Person, and if Parent is in receipt of a Parent Acquisition Proposal, Parent shall notify the Company, in writing, of any decision of the Board of Directors of Parent or any committee thereof as to whether to consider any Parent Acquisition Proposal or to enter into discussions or negotiations concerning any Parent Acquisition Proposal or to provide nonpublic information with respect to such Parent Acquisition Proposal to any Person, which notice in any such case shall be given no later than twenty-four (24) hours after such determination is reached. Both the Company and Parent shall keep the other informed, on a current basis, of the status and material developments (including any changes to the terms) of such Company Acquisition Proposal or Parent Acquisition Proposal, respectively, including by providing a copy of all written proposals and a summary of all oral proposals or material oral modifications to an earlier written proposal, in each case relating to any Company Acquisition Proposal or Parent Acquisition Proposal, as applicable.

(d) The Company and Parent shall, and shall cause each of their respective Subsidiaries and their respective Representatives to, immediately cease and cause to be terminated any and all existing activities, discussions or negotiations with any Person conducted heretofore with respect to, or that may reasonably be expected to lead to, a Company Acquisition Proposal or Parent Acquisition Proposal. The Company and Parent shall each immediately revoke or withdraw access of any Person (other than Parent, the Company and their respective Representatives) to any data room (virtual or actual) containing any nonpublic information with respect to the Company or Parent, as applicable, and request from each third party (other than Parent, the Company and their Representatives) the prompt return or destruction of all nonpublic information with respect to the Company or Parent, as applicable, previously provided or made accessible to such Person.

ARTICLE 5
ADDITIONAL AGREEMENTS OF THE PARTIES

Section 5.1 Filings; Other Actions.

(a) Parent and the Company shall use reasonable best efforts to take or cause to be taken such actions as may be required to be taken under the Securities Act, the Exchange Act, any other federal securities Laws, any applicable state securities or "blue sky" Laws and any stock exchange requirements in connection with the Merger and the other transactions contemplated by this Agreement. Without limiting the foregoing, as promptly as practicable after the date of this Agreement, the Parties shall prepare and cause to be filed with the SEC the Joint Proxy Statement/Prospectus and the Form S-4 Registration Statement, in which the Joint Proxy Statement/Prospectus will be included as a prospectus; provided, however, that prior to the filing of the Joint Proxy Statement/Prospectus and the Form S-4 Registration Statement, Parent shall consult with the Company with respect to such filings and shall afford the Company reasonable opportunity to review and comment thereon (including the proposed final versions thereof), which Parent shall consider in good faith. The Parties shall use reasonable best efforts to cause the Joint Proxy Statement/Prospectus to be mailed to Parent's stockholders and the Company's stockholders, all as promptly as reasonably practicable after the date on which the Form S-4 Registration Statement is declared effective under the Securities Act (the "***S-4 Effective Date***").

(b) The Company shall promptly provide Parent with any information for inclusion in the Joint Proxy Statement/Prospectus and the Form S-4 Registration Statement that may be required under applicable Law or that is reasonably requested by Parent. Without limiting the generality of the foregoing, if the Joint Proxy Statement/Prospectus is to be mailed after February 14, 2019, the Company shall provide Parent with a copy of the Company's consolidated balance sheet as of December 31, 2018, and the related consolidated statements of operations, cash flows and stockholders equity for the fiscal year then ended, together with the notes thereto (collectively, the "***Additional Company Financial Statements***"). The Additional Company Financial Statements shall (i) comply as to form in all material respects with the published rules and regulations of the SEC with respect thereto, (ii) be prepared in accordance with GAAP applied on a consistent basis (unless otherwise noted therein) throughout the periods indicated, and (iii) fairly present, in all material respects, the financial condition and operating results of the Company as of the dates and for the periods indicated therein.

(c) Parent shall notify the Company of the receipt of comments from the SEC and of any request from the SEC for amendments or supplements to the Joint Proxy Statement/Prospectus, the Form S-4 Registration Statement or for additional information, and will promptly supply to the Company copies of all correspondence between Parent, on the one hand, and the SEC or members of its staff, on the other hand, with respect to the Joint Proxy Statement/Prospectus, the Form S-4 Registration Statement or the Merger. Parent and the Company shall use reasonable best efforts to resolve all SEC comments with respect to the Joint Proxy Statement/Prospectus, the Form S-4 Registration Statement and any other required filings as promptly as practicable after receipt thereof. Parent and the Company agree to correct any information provided by it for use in the Joint Proxy Statement/Prospectus or the Form S-4 Registration Statement, which shall have become false or misleading in any material respect. The Company will promptly notify Parent if at any time prior to the Parent Stockholder Meeting any event should occur which is required by applicable Law to be set forth in an amendment of, or a supplement to, the Joint Proxy Statement/Prospectus or the Form S-4 Registration Statement. In such case, the Parties will cooperate to promptly prepare and file such amendment or supplement with the SEC to the extent required by applicable Law and will mail such amendment or supplement to Parent's stockholders to the extent required by applicable Law; provided, however, that prior to such filing, each Party shall consult with each other Party with respect to such amendment or supplement and shall afford each such Party reasonable opportunity to review and comment thereon (including the proposed final versions thereof), which Parent shall consider in good faith.

Section 5.2 Stockholder Approval.

(a) Company Stockholder Meeting. The Company shall take all action necessary in accordance with applicable Laws and the Company Charter and Company Bylaws to call, give notice of, convene and hold a meeting of the Company Stockholders (the "***Company Stockholder Meeting***") to consider and vote on proposals to adopt and approve this Agreement and the Merger (the "***Company Stockholder Proposals***"). The Company shall mail the Joint Proxy Statement/Prospectus as soon as reasonably practicable after the S-4 Effective Date and shall hold the Company Stockholder Meeting no later than forty-five (45) days after mailing the Joint Proxy Statement/Prospectus, unless a later date is mutually agreed to by the Company and Parent. The Company shall take all actions as are reasonably necessary or appropriate to solicit from the Company Stockholders proxies in favor of the Company Stockholder Proposals. If on the scheduled date of the Company Stockholder Meeting, the Company has not obtained the Company Stockholder Approval, the Company shall have the right to adjourn or postpone the Company Stockholder Meeting to a later date or dates, such later date or dates not to exceed thirty (30) days from the original date that the Company Stockholder Meeting was scheduled for the approval of the Company Stockholder Proposals. Subject to the provisions of Section 4.5(a), the Board of Directors of the Company recommends that the Company Stockholders approve the Company Stockholder Proposals (the "***Company Recommendation***") and the Company shall include the Company Recommendation in the Joint Proxy Statement/Prospectus. Without limiting the generality of the foregoing, the Company agrees that unless this Agreement has been terminated in accordance with Section 7.1, its obligations under this Section 5.2(a) shall not be affected by the commencement, public proposal, public disclosure or communication to the Company of any Company Acquisition Proposal or by any Company Change of Recommendation.

(b) Parent Stockholder Meeting. Parent shall take all action necessary in accordance with applicable Laws and the Parent Charter and Parent Bylaws to call, give notice of, convene and hold a meeting of the Parent Stockholders (the "***Parent Stockholder Meeting***") to consider and vote on proposals to approve (i) the issuance of the shares of Parent Common Stock in connection with the Merger, (ii) the Spinoff, (iii) the New Equity Incentive Plan, and (iv) amendments to the Parent Charter to effect the Reverse Stock Split (if applicable) immediately prior to the Effective Time and to change the name of Parent to "Emmaus Life Sciences, Inc." at the Effective Time (collectively, the "***Parent Stockholder Proposals***"). Parent shall mail the Joint Proxy Statement/Prospectus as soon as reasonably practicable after the S-4 Effective Date and shall hold the Parent Stockholder Meeting no later than forty-five (45) days after mailing the Joint Proxy Statement/Prospectus, unless a later date is mutually agreed to by the Company and Parent. Parent shall take all actions as are reasonably necessary or appropriate to solicit from the Parent Stockholders proxies in favor of the Parent Stockholder Proposals. If on the scheduled date of the Parent Stockholder Meeting, Parent has not obtained the Parent Stockholder Approval, Parent shall have the right to adjourn or postpone the Parent Stockholder Meeting to a later date or dates, such later date or dates not to exceed thirty (30) days from the original date that the Parent Stockholder Meeting was scheduled for the approval of the Parent Stockholder Proposals. Subject to the provisions of Section 4.5(b), the Board of Directors of Parent recommends that the Parent Stockholders approve the Parent Stockholder Proposals (the "***Parent Recommendation***") and Parent shall include the Parent Recommendation in the Joint Proxy Statement/Prospectus. Without limiting the generality of the foregoing, Parent agrees that unless this Agreement has been terminated in accordance with Section 7.1, its obligations under this Section 5.2(b) shall not be affected by the commencement, public proposal, public disclosure or communication to Parent of any Parent Acquisition Proposal or by any Parent Change of Recommendation.

Section 5.3 Regulatory Approvals. Each Party shall use commercially reasonable efforts to file or otherwise submit, as soon as practicable after the date of this Agreement, all applications, notices, reports and other documents reasonably required to be filed by such Party with or otherwise submitted by such Party to any Governmental Authority with respect to the Merger and the other Contemplated Transactions, and to submit promptly any additional information requested by any such Governmental Authority.

Section 5.4 Schedules.

(a) The Company shall prepare and deliver to Parent three (3) Business Days prior to the Closing, a schedule (the "***Company Net Cash Schedule***") setting forth, in reasonable detail, the Company's good faith estimate of Net Cash to be held by the Company as of the Closing, together with the work papers and back-up materials used in preparing such Company Net Cash Schedule.

(b) Parent shall prepare and deliver to the Company three (3) Business Days prior to the Closing, a schedule (the "***Parent Net Liabilities and Stockholders' Equity Schedule***") setting forth, in reasonable detail, Parent's good faith estimate of the Net Liabilities and stockholders' equity of Parent, as of the Closing, together with the work papers and back-up materials used in preparing such Parent Net Liabilities and Stockholders' Equity Schedule. For purposes of this Agreement, the term "***Net Liabilities***" means all Liabilities of Parent less the sum of all cash and equivalents and deposits of Parent. Stockholders' equity (deficit) shall be determined in accordance with generally accepted accounting principles applied on a basis consistent with the Parent Financial Statements.

Section 5.5 Spinoff; Asset Sale; Reorganization; Stock Issuance.

(a) Parent shall take the actions set forth in a Separation and Spinoff Agreement being executed concurrently with the entry into this Agreement (the "***Spinoff Agreement***") which provides that prior to the Closing, (i) up to all of the assets (including the capital stock of each of its Subsidiaries and Parent Contracts (other than as may be disposed of in any Permitted Asset Sale)), but excluding the Retained Liabilities, may be transferred from Parent to the Parent California Subsidiary (the "***Spinoff Assets***") and (ii) the Parent California Subsidiary shall be owned by the pre-Closing stockholders of Parent (collectively, the "***Spinoff***"). Following the execution of this Agreement, Parent shall file with the SEC all documents necessary to consummate the Spinoff in accordance with the terms herein. Parent and the Company shall agree in good faith as to which assets of Parent shall be retained by Parent in order to cause the Parent California Subsidiary to be solvent prior to and immediately after the Spinoff (the "***Retained Assets***").

(b) Notwithstanding any provision of this Agreement to the contrary, at any time prior to the Closing Date, Parent may sell, lease or dispose of any of its assets or properties in exchange for cash or other consideration, which cash or other consideration may be included in the assets to be included in the Spinoff (each, a "***Permitted Asset Sale***"), provided that (i) no Permitted Asset Sale shall impose on Parent or any Subsidiary of Parent (other than the Parent California Subsidiary) any ongoing monetary obligations to any third party in excess of $250,000 in the aggregate ("***Permitted Asset Sale Liabilities***"), (ii) no Permitted Asset Sale shall impose any non-compete, non-solicitation, exclusivity, rights of first refusal or other similar restraint or covenant on Parent or any of its Subsidiaries (other than the Parent California Subsidiary) or any other impairment on the ability of Parent or any of its Subsidiaries (other than the Parent California Subsidiary) to conduct its or their business following the Closing; and (iii) no Permitted Asset Sale shall cause the failure of a condition to the Closing or otherwise impair or delay the consummation of the transactions contemplated by this Agreement.

(c) Notwithstanding any provision of this Agreement to the contrary, at any time prior to the Closing Date, Parent may undertake one or more transactions, including one or more tender offers, exchange offers, or similar transactions, which results in the issuance, modification, conversion, exchange, acceleration, extension, or termination of Parent Warrants, Parent Stock Options or Parent Restricted Stock Awards (each, a "***Permitted Parent Reorganization***").

(d) Notwithstanding any provision of this Agreement to the contrary, at any time prior to the Closing Date, the Company may undertake one or more transactions, including one or more tender offers, exchange offers, or similar transactions, which results in the modification, conversion, exchange, or termination of any Company Warrants, Company Stock Options, Company Convertible Notes, Company Debentures or other Company indebtedness (each, a "***Permitted Company Reorganization***").

(e) Notwithstanding any provision of this Agreement to the contrary, at any time prior to the Closing Date, Parent may issue and sell, in or more public offerings or private placements, up to 5,000,000 shares of Parent Common Stock, on terms and conditions acceptable to Parent including pursuant to the common stock purchase agreement executed with Aspire Capital Fund, LLC on May 15, 2018 (each, a "***Permitted Parent Issuance***"); provided that if the proceeds received by Parent from the sales of 5,000,000 shares of Parent Common Stock, in the aggregate, are less than $5,000,000 in the aggregate, Parent may issue and sell up to 3,200,000 additional shares of Parent Common Stock for aggregate proceeds to Parent of up to $2,000,000, and such additional shares of Parent Common Stock will be part of the Permitted Parent Issuance. Any and all proceeds from any Permitted Parent Issuance may be contributed to the Parent California Subsidiary in connection with the Spinoff.

(f) Notwithstanding any provision of this Agreement to the contrary, at any time prior to the Closing Date, the Company may issue and sell, in one or more private offerings, up to 5,000,000 shares of Company Common Stock, on terms and conditions acceptable to the Company (each a "***Permitted Company Issuance***").

Section 5.6 Indemnification of Officers and Directors.

(a) From and after the Effective Time, Parent and the Surviving Corporation will fulfill and honor in all respects all rights to indemnification, exculpation or advancement of expenses now existing in favor of, and all limitations on the personal liability of each present and former director, officer, employee, fiduciary, or agent of Parent or the Company provided for in the respective organizational documents of Parent and the Company in effect as of the date hereof, and shall continue to be honored and in full force and effect for a period of six (6) years after the Effective Time; provided, however, that all rights to indemnification in respect of any claims asserted or made within such period shall continue until the disposition of such claim. The certificate of incorporation of the Surviving Corporation will contain provisions with respect to indemnification, exculpation from liability and advancement of expenses that are at least as favorable as those currently in the Company Charter and Company Bylaws and during such six (6) year period following the Effective Time, Parent shall not and shall cause the Surviving Corporation not to amend, repeal or otherwise modify such provisions in any manner that would materially and adversely affect the rights thereunder of individuals who at any time prior to the Effective Time was a director, officer, employee, fiduciary, or agent of the Company in respect of actions or omissions occurring at or prior to the Effective Time, unless such modification is required by applicable Laws. From and after the Effective Time, Parent and the Surviving Corporation also agree, jointly and severally, to indemnify and hold harmless the present and former officers, directors, employees, fiduciaries and agents of the Company in respect of acts or omissions occurring prior to the Effective Time to the extent (i) provided in any existing indemnification agreements between the Company and such individuals, or (ii) required by the Company Charter or the Company Bylaws, in each case as in effect immediately prior to the Effective Time.

(b) The Company shall purchase a six-year "tail" policy under the Company's existing directors' and officers' liability insurance policy, with an effective date as of the Closing. Parent shall purchase a six-year "tail" policy under Parent's existing directors' and officers' liability insurance policy, with an effective date as of the Closing.

(c) The provisions of this Section 5.6 are intended to be for the benefit of, and shall be enforceable by, each of the Persons indemnified hereby, and his or her heirs and Representatives, and may not be amended, altered or repealed without the written consent of any such Person affected by such amendment, alteration or repeal. The provisions in this Section 5.6 are intended to be in addition to the rights otherwise available to the current directors, officers, employees, fiduciaries and/or agents of the Company by Laws, charters, bylaws or agreements.

(d) If Parent or the Surviving Corporation or any of the successors or assigns of Parent or the Surviving Corporation (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 5.6.

Section 5.7 Additional Agreements.

(a) Subject to Section 5.7(b), the Parties shall use commercially reasonable efforts to cause to be taken all actions necessary to consummate the Merger and make effective the other Contemplated Transactions. Without limiting the generality of the foregoing, but subject to Section 5.7(b), each Party to this Agreement: (i) shall make all filings and other submissions (if any) and give all notices (if any) required to be made and given by such Party in connection with the Merger and the other Contemplated Transactions, (ii) shall use commercially reasonable efforts to obtain each consent (if any) reasonably required to be obtained (pursuant to any applicable Law or Contract, or otherwise) by such Party in connection with the Merger or any of the other Contemplated Transactions or for such Contract to remain in full force and effect, (iii) shall use commercially reasonable efforts to lift any injunction prohibiting, or any other legal bar to, the Merger or any of the other Contemplated Transactions, and (iv) shall use commercially reasonable efforts to satisfy the conditions precedent to the consummation of this Agreement.

(b) Except as otherwise specifically provided in this Agreement, no Party shall have any obligation under this Agreement: (i) to dispose of or transfer or cause any of its Subsidiaries to dispose of or transfer any assets, (ii) to discontinue or cause any of its Subsidiaries to discontinue offering any product or service, (iii) to license or otherwise make available, or cause any of its Subsidiaries to license or otherwise make available to any Person any Intellectual Property, (iv) to hold separate or cause any of its Subsidiaries to hold separate any assets or operations (either before or after the Closing Date), (v) to make or cause any of its Subsidiaries to make any commitment (to any Governmental Authority or otherwise) regarding its future operations, or (vi) to contest any Legal Proceeding or any order, writ, injunction or decree relating to the Merger or any of the other Contemplated Transactions if such Party determines in good faith that contesting such Legal Proceeding or order, writ, injunction or decree might not be advisable.

Section 5.8 Disclosure. Without limiting any of either Party's obligations under the Confidentiality Agreement, each Party shall not, and shall not permit any of its Subsidiaries or any Representative of such Party to, issue any press release or make any public disclosure regarding the Merger or any of the other Contemplated Transactions unless: (a) the other Party shall have approved such press release or disclosure in writing, which approval shall not unreasonably be withheld, or (b) such Party shall have determined in good faith, upon the advice of outside legal counsel, that such disclosure is required by applicable Laws, in which case such Party shall use reasonable best efforts before such press release or disclosure is issued or made, to advise the other Party of, and consult with the other Party regarding, the text of such press release or other disclosure and allow such other Party a reasonable opportunity to comment on such release or other disclosure in advance of such issuance and consider all such comments in good faith; provided, that the foregoing clause (b) shall not apply to the press release and a Current Report on Form 8-K to be filed by each of Parent and the Company in connection with the initial announcement of the Merger Agreement and the Contemplated Transactions; provided, further, that each of the Company and Parent may make any public statement in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements are consistent with the filings contemplated in Section 5.1(a) or press releases, public disclosures or public statements made by the Company or Parent in compliance with this Section 5.8.

Section 5.9 Stock Exchange Listing.

(a) Parent shall use its commercially reasonable efforts to maintain its existing listing on NASDAQ. Parent shall use its commercially reasonable efforts to: (i) prepare and submit to NASDAQ a notification form for the listing of the shares of Parent Common Stock to be issued or issuable in the Merger and to cause such shares to be approved for listing (subject to notice of issuance) and (ii) to file within ten (10) days after the date hereof an initial listing application under Rule 5110 of the NASDAQ Marketplace Rules for the Parent Common Stock on NASDAQ (the "***NASDAQ Listing Application***") and to cause such NASDAQ Listing Application to be approved for listing (subject to official notice of issuance).

(b) The Company will cooperate with Parent as requested by Parent with respect to the NASDAQ Listing Application and promptly furnish to Parent all information concerning the Company and its Affiliates that may be reasonably required or requested in connection with any action contemplated by this Section 5.9. The Company will use its commercially reasonable efforts to take all actions (i) to effect one or more Permitted Company Reorganizations, (ii) cause the Company Convertible Notes to become Converted Notes as of the Closing as contemplated herein, (iii) repay or convert to Company Common Stock the Company's other Indebtedness and (iv) take any other action within the Company's control or authority, in each case to the extent reasonably required to meet the NASDAQ stockholder equity requirements.

Section 5.10 Section 16 Matters. Subject to the following sentence, prior to the Effective Time, Parent and Company will take all such steps as may be required (to the extent permitted under applicable Laws and no-action letters issued by the SEC) to cause any acquisition of Parent Common Stock (including derivative securities with respect to Parent Common Stock) by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Parent, to be exempt under Rule 16b-3 under the Exchange Act. At least thirty (30) days prior to the Closing Date, Company will furnish the following information to Parent for each individual who, immediately after the Effective Time, will become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Parent: (a) the number of shares of Company Capital Stock owned by such individual and expected to be exchanged for shares of Parent Common Stock pursuant to the Merger, and (b) the number of other derivative securities (if any) with respect to Company Capital Stock owned by such individual and expected to be converted into shares of Parent Common Stock or derivative securities with respect to Parent Common Stock in connection with the Merger.

Section 5.11 Tax Matters.

(a) For U.S. federal and state income Tax purposes, the parties hereto intend that the Merger will constitute a "reorganization" within the meaning of Section 368(a) of the Code. Parent, Merger Sub, and the Company (i) shall use their respective reasonable best efforts to cause the Merger, together with the issuance of shares of Parent Common Stock to the Company Stockholders, to qualify as a "reorganization" under Section 368(a) of the Code, and (ii) agree not to, and not to take any actions or positions or cause or permit any action or position to be taken or fail to take or cause to be failed to be taken any actions or positions, which action, position or failure would or could reasonably be expected to prevent or impede the Merger, together with the issuance of shares of Parent Common Stock to the Company Stockholders, from qualifying as a "reorganization" under Section 368(a) of the Code. For the avoidance of any doubt, this Section 5.11 shall not prohibit the Spinoff.

(b) This Agreement is intended to constitute, and the parties hereto hereby adopt this Agreement as, a "plan of reorganization" within the meaning Treasury Regulation Sections 1.368-1(c), 1.368-2(g) and 1.368-3(a). Parent, Merger Sub, and the Company shall treat, and shall not take any tax reporting position inconsistent with the treatment of, the Merger, together with the issuance of shares of Parent Common Stock to the Company Stockholders, as a "reorganization" within the meaning of Section 368(a) of the Code for U.S. federal, state and other relevant Tax purposes, unless otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code.

(c) For U.S. federal and state income Tax purposes, the parties hereto acknowledge and agree that the Merger will constitute a "reverse acquisition" as described in Treasury Regulations Section 1.1502-75(d)(3), and to refrain from taking any position inconsistent with the foregoing for U.S. federal, state and other relevant Tax purposes, unless otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code. Notwithstanding the foregoing, subject to Section 8.12 of the Spinoff Agreement, the net operating losses of the Parent California Subsidiary shall follow such Subsidiary after the Spinoff to the extent permitted under applicable Law. None of Parent or the Company shall make any election with respect to the net operating losses of the Parent California Subsidiary without the prior written approval of the Parent California Subsidiary, which approval shall be provided by the Parent California Subsidiary in its sole and absolute discretion.

Section 5.12 Cooperation. Each Party shall cooperate reasonably with the other Party and shall provide the other Party with such assistance as may be reasonably requested for the purpose of facilitating the performance by each Party of their obligations under this Agreement and to enable the combined entity to continue to meet its obligations following the Closing.

Section 5.13 Directors and Officers of Parent.

(a) At and immediately after the Effective Time, the directors of Parent shall be those Persons specified or designated as provided in Schedule 5.13(a), who shall include up to six Persons designated by the Company and one Person designated by Parent and who shall serve until their respective successors are duly elected or appointed and qualified or their earlier death, resignation or removal. Parent shall take all actions necessary to cause such Company designees to be elected or appointed to the Board of Directors of Parent. If any Person listed or designated in Schedule 5.13(a) is unable or unwilling to serve as a director of Parent as set forth therein, the Party designating such Person (as set forth in Schedule 5.13(a)) shall designate a successor.

(b) At and immediately after the Effective Time, the officers of Parent shall be those Persons specified or designated as provided in Schedule 5.13(b). If any Person listed or designated in Schedule 5.13(b) is unable or unwilling to serve as an officer of Parent as set forth therein, the Company shall designate a successor.

Section 5.14 **Stockholder Litigation**. Until the earlier of the termination of this Agreement in accordance with its terms or the Effective Time, Parent, on the one hand, and the Company, on the other hand, shall give the other Party the opportunity to participate in the defense or settlement of any stockholder litigation relating to this Agreement or any of the Contemplated Transactions, and shall not settle any such litigation without the other Party's written consent, which will not be unreasonably withheld, conditioned or delayed.

Section 5.15 **Allocation Certificate and Capitalization Certificate**.

(a) The Company shall prepare and deliver to Parent at least five (5) Business Days prior to the Closing Date a certificate signed by the Chief Financial Officer of the Company in a form reasonably acceptable to Parent setting forth (as of immediately prior to the Effective Time) (i) each record holder of Company Capital Stock, Company Stock Options, Company Warrants and Company Convertible Notes, (ii) such holder's name and address, (iii) the number and type of Company Capital Stock held by such holder, (iv) the number of shares of Company Common Stock underlying the Company Stock Options, Company Warrants or Company Convertible Notes as of the Closing Date for each such holder, (v) the number and type of Company Capital Stock issuable or exchangeable for any other indebtedness of the Company, and (vi) the number of shares of Parent Common Stock to be issued to such holder pursuant to this Agreement in respect of the Company Capital Stock, or to be issued pursuant to this Agreement upon exercise or conversion of any Company Stock Options, Company Warrants or Company Convertible Notes or in exchange for any other Company indebtedness held by such holder as of immediately prior to the Effective Time (the "***Company Allocation Certificate***"). Except in connection with the Contemplated Transactions, the Company (and Parent after the Effective Time for a period of six (6) months after the Effective Time) shall not amend the terms of any Company Stock Options, Company Warrants, Company Convertible Notes or such other Company Indebtedness after the delivery of the Company Allocation Certificate, whether before or after the Effective Time, to increase the number of shares of Parent Common Stock issuable upon conversion thereof or to substitute any other share of Capital Stock of Parent to be issued upon exercise of any such Company Stock Options, Company Warrants, Company Convertible Notes or such other Company indebtedness after the Effective Time. The Spinoff Agreement shall provide that if Parent (or the Surviving Corporation or any other Subsidiary of Parent after the Effective Time) converts any Company Indebtedness (other than Company Convertible Notes that are included in the calculation of the Exchange Ratio) into equity during the six (6) month period after closing, Parent will issue shares of the same class of stock issued in connection with such conversion to the Parent California Subsidiary. The number of shares to be issued to the Parent California Subsidiary will cause the Parent California Subsidiary to own 5.9% of the total number of shares issued in such debt conversion (including the shares issued to the Parent California Subsidiary) in excess of the number of shares included in the calculation of the Exchange Ratio.

(b) Parent shall prepare and deliver to the Company at least five (5) Business Days prior to the Closing Date a certificate signed by the Chief Financial Officer of Parent in a form reasonably acceptable to the Company setting forth (as of immediately prior to the Effective Time) (i) each record holder of Parent Capital Stock, Parent Stock Options, Parent Warrants, and other instrument exercisable or exchangeable for or convertible into Parent Capital Stock, (ii) such holder's name and address and (iii) the number and type of Parent Capital Stock held and/or underlying the Parent Stock Options, Parent Warrants or such instrument as of the Closing Date for each such holder (the "***Parent Capitalization Certificate***").

Section 5.16 Reverse Split. If deemed necessary or advisable by the Parties, Parent shall submit to the Parent Stockholders at the Parent Stockholder Meeting a proposal to approve and adopt an amendment to the Parent Charter to authorize the Board of Directors of Parent to effect a reverse stock split prior to the Effective Time of all outstanding shares of Parent Common Stock at a reverse stock split ratio in the range mutually agreed to by the Company and the Board of Directors of Parent (the "***Reverse Stock Split***"), and shall take such other actions as shall be reasonably necessary to effectuate the Reverse Stock Split prior to the Effective Time.

Section 5.17 Termination of Certain Agreements and Rights. Parent shall cause the Contracts set forth on Section 5.17 Parent Disclosure Schedule to be either (a) transferred to the Parent California Subsidiary or (b) terminated immediately prior to the Effective Time, without any material liability being imposed on the part of Parent or the Surviving Corporation.

ARTICLE 6
CONDITIONS PRECEDENT

Section 6.1 Conditions to Each Party's Obligation to Effect the Merger The obligations of each Party to effect the Merger and otherwise consummate the transactions to be consummated at the Closing are subject to the satisfaction or, to the extent permitted by applicable Law, the written waiver by each of the Parties, at or prior to the Closing, of each of the following conditions:

(a) No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Merger shall have been issued by any court of competent jurisdiction or other Governmental Authority and remain in effect, and there shall not be any Law which has the effect of making the consummation of the Merger illegal.

(b) Stockholder Approval. This Company Stockholder Proposal shall have been duly approved by the Company Stockholder Approval, and the Parent Stockholder Proposals shall have been duly approved by the Parent Stockholder Approval.

(c) S-4 Registration Statement. The Form S-4 Registration Statement shall have become effective in accordance with the provisions of the Securities Act and shall not be subject to any stop order or proceeding (or threatened proceeding by the SEC) seeking a stop order with respect to the Form S-4 Registration Statement.

(d) NASDAQ. The NASDAQ Listing Application shall have been approved and the shares of Parent Common Stock to be issued in the Merger shall have been approved for listing on NASDAQ as of the Effective Time, in each case subject to official notice of issuance (the "***NASDAQ Condition***").

(e) Dissenting Shares. The Dissenting Shares shall not exceed 20% of the outstanding shares of Company Common Stock entitled to vote at the Company Stockholder Meeting.

(f) Spinoff. The Spinoff shall have occurred or shall be expected to occur simultaneously with or after the Merger and Parent shall have reasonably determined in good faith that the Spinoff will not result in any material Tax Liability (which is to be a Liability of the Parent California Subsidiary after the Spinoff pursuant to the terms of the Spinoff Agreement).

Section 6.2 Additional Conditions Precedent to Obligation of Parent. The obligations of Parent and Merger Sub to effect the Merger and otherwise consummate the transactions to be consummated at the Closing are subject to the satisfaction or the written waiver by Parent, at or prior to the Closing, of each of the following conditions:

(a) Accuracy of Representations. The Company Fundamental Representations shall have been true and correct in all respects as of the date of this Agreement (other than in any de minimis respect) and shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of such date (except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date). The representations and warranties of the Company contained in Article 2 of this Agreement (other than the Company Fundamental Representations) shall be true and correct on and as of the Closing Date with the same force and effect as if made on the Closing Date except (i) in each case, or in the aggregate, where the failure to be so true and correct would not reasonably be expected to have a Company Material Adverse Effect (without giving effect to any references therein to any Company Material Adverse Effect or other materiality qualifications), or (ii) for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct, subject to the qualifications as set forth in the preceding clause (i), as of such particular date) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Company Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded).

(b) Performance of Covenants. Each of the covenants and obligations in this Agreement that the Company is required to comply with or to perform at or prior to the Closing shall have been complied with and performed by the Company in all material respects.

(c) No Company Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Company Material Adverse Effect.

(d) Cash, Converted Notes and Other Company Indebtedness. (i) The Company will have sufficient cash on hand and working capital to operate its business for at least 12 months after the Closing and (ii) at least 90% of the Company Convertible Notes shall have become Converted Notes. In addition, the Company shall have used its commercially reasonable efforts to repay or convert to Company Common Stock the Company's other Indebtedness.

(e) FIRPTA Certificate . At or prior to the Closing, the Company shall have delivered to Parent (i) a notice to the IRS, in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2), dated as of the Closing Date, together with written authorization for Parent to deliver such notice to the IRS on behalf of the Company after the Closing and (ii) a certificate that the shares of common stock of the Company are not a "United States real property holding interests" (as defined in Section 897(c)(2) of the Code) prepared in accordance with the Treasury Regulations issued pursuant to Sections 897 and 1445 of the Code and reasonably satisfactory to Parent.

(f) Officers' Certificate. Parent shall have received a certificate executed by the chief executive officer and chief financial officer of the Company certifying (i) that the conditions set forth in Section 6.2(a) and Section 6.2(b) have been duly satisfied, (ii) that the contents of the Company Net Cash Schedule, delivered three (3) Business Days prior to Closing, as well as the work papers and back-up materials provided therewith, are true and correct in all respects and that the Company Net Cash Condition has been satisfied, and (iii) that the Company Allocation Certificate, delivered five (5) Business Days prior to the Closing, is true and correct in all material respects as of the Closing.

Section 6.3 Additional Conditions Precedent to Obligation of the Company. The obligations of the Company to effect the Merger and otherwise consummate the transactions to be consummated at the Closing are subject to the satisfaction or the written waiver by the Company, at or prior to the Closing, of each of the following conditions:

(a) Accuracy of Representations. Each of the Parent Fundamental Representations shall have been true and correct in all respects as of the date of this Agreement (other than in any de minimis respect) and shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of such date (except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date). The representations and warranties of Parent contained in Article 3 of this Agreement (other than the Parent Fundamental Representations) shall be true and correct on and as of the Closing Date except (i) in each case, or in the aggregate, where the failure to be true and correct would not reasonably be expected to have a Parent Material Adverse Effect (without giving effect to any references therein to any Parent Material Adverse Effect or other materiality qualifications), or (ii) for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct, subject to the qualifications as set forth in the preceding clause (i), as of such particular date) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Parent Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded).

(b) Performance of Covenants. All of the covenants and obligations in this Agreement that Parent and Merger Sub 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.

(c) No Parent Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Parent Material Adverse Effect.

(d) Unpaid Transaction Expenses. The unpaid expenses of Parent incurred in connection with the entry into this Agreement, the Merger, the Form S-4 Registration Statement and the Joint Proxy Statement/Prospectus and the Parent Stockholder Meeting shall not exceed $500,000 and all of the expenses and fees incurred by Parent in connection with any fairness opinion of its financial advisor, the Spinoff and any Permitted Parent Reorganization shall have been paid, settled or extinguished and Parent shall have provided evidence reasonably satisfactory to the Company of the payment, settlement or extinguishment of such expenses and fees. The Net Liabilities of Parent, including the Retained Liabilities, Permitted Asset Sale Liabilities and the unpaid expenses of Parent referred to above shall not exceed $750,000. The consolidated stockholders' equity of Parent shall not be less than zero.

(e) Officers' Certificate. The Company shall have received (i) a certificate executed by the chief executive officer and chief financial officer of Parent certifying that the conditions set forth in Section 6.3(a) and Section 6.3(b) have been duly satisfied, (ii) that the Parent Capitalization Certificate, delivered five (5) Business Days prior to the Closing, is true and correct in all material respects as of the Closing, and (iii) written resignations, in forms satisfactory to the Company, dated as of the Closing Date and effective as of the Closing executed by the officers and directors of Parent (other than any director of Parent who is to continue as a director pursuant to Section 5.13 hereof).

(f) Transfer or Termination of Certain Agreements. The Contracts set forth in Section 5.17 Parent Disclosure Schedule shall have been either transferred to the Parent California Subsidiary or terminated, without any material liability being imposed on the part of Parent or the Surviving Corporation.

(g) Sarbanes-Oxley Certifications. Neither the principal executive officer nor the principal financial officer of Parent shall have failed to provide, with respect to any Parent SEC Reports filed with the SEC on or after the date of this Agreement, any necessary certification in the form required under Rule 13a-14 under the Exchange Act and the Sarbanes-Oxley Act.

(h) Parent Preferred Stock. There shall be outstanding no shares of Parent Preferred Stock or securities or other rights to acquire any Parent Preferred Stock as of immediately prior to the Effective Time.

ARTICLE 7
TERMINATION

Section 7.1 Termination. This Agreement may be terminated prior to the Effective Time (whether before or after Company Stockholder Approval and whether before or after Parent Stockholder Approval, unless otherwise specified below):

(a) by mutual written consent of Parent and the Company duly authorized by the Board of Directors of Parent and the Company;

(b) by either Parent or the Company if the Merger shall not have been consummated by May 31, 2019 (the "***Outside Date***"); provided, however, that the right to terminate this Agreement under this Section 7.1(b) shall not be available to any Party whose action or failure to act has been a principal cause of the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement; and provided, further, however, that, in the event that a request for additional information has been made by any Governmental Authority, or in the event that the S-4 Effective Date shall not have occurred by the date which is sixty (60) days prior to the Outside Date, then either the Company or Parent shall be entitled to extend the Outside Date for an additional sixty (60) days by written notice to the other;

(c) by either Parent or the Company if a court of competent jurisdiction or other Governmental Authority shall have issued an order, decree or ruling, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger; provided, however, that a Party shall not be permitted to terminate this Agreement pursuant to this Section 7.1(c) if the issuance of any such order, decree, ruling or other action shall have been caused principally by the action or failure to act of such Party and such action or failure to act constitutes a material breach by such party of this Agreement;

(d) by either Parent or the Company if (i) the Parent Stockholder Meeting (including any adjournments and postponements thereof) shall have been held and completed and Parent's stockholders shall have taken a vote on the Parent Stockholder Proposals and such Parent Stockholder Proposals shall not have been approved at the Parent Stockholder Meeting (or at any adjournment or postponement thereof) by the Parent Stockholder Approval; provided, however, that the right to terminate this Agreement under this Section 7.1(d) shall not be available to Parent where the failure to obtain the Parent Stockholder Approval shall have been caused by the action or failure to act of Parent and such action or failure to act constitutes a material breach by Parent of this Agreement;

(e) by either Parent or the Company if (i) the Company Stockholder Meeting (including any adjournments and postponements thereof) shall have been held and completed and the Company's stockholders shall have taken a vote on the Company Stockholder Proposals and such Company Stockholder Proposals shall not have been approved at the Company Stockholder Meeting (or at any adjournment or postponement thereof) by the Company Stockholder Approval; provided, however, that the right to terminate this Agreement under this Section 7.1(e) shall not be available to the Company where the failure to obtain the Company Stockholder Approval shall have been caused by the action or failure to act of the Company and such action or failure to act constitutes a material breach by the Company of this Agreement;

(f) by the Company (at any time prior to the Parent Stockholder Approval) if (i) a Parent Change of Recommendation shall have occurred, (ii) Parent fails to include the Parent Recommendation in the Joint Proxy Statement/Prospectus, or (iii) the Board of Directors of Parent fails to publicly recommend against any Parent Acquisition Proposal within ten (10) Business Days of the request of the Company to do so or fails to reaffirm (publicly, if so requested) the Parent Recommendation within ten (10) Business Days of the Company's request to do so;

(g) by Parent (at any time prior to the Company Stockholder Approval) if (i) a Company Change of Recommendation shall have occurred, (ii) the Company fails to include the Company Recommendation in the Joint Proxy Statement/Prospectus, or (iii) the Board of Directors of the Company fails to publicly recommend against any Company Acquisition Proposal within ten (10) Business Days of the request of Parent to do so or fails to reaffirm (publicly, if so requested) the Company Recommendation within ten (10) Business Days of Parent's request to do so

(h) by the Company, upon a breach of any representation, warranty, covenant or agreement on the part of Parent or Merger Sub set forth in this Agreement, or if any representation or warranty of Parent shall have become inaccurate, in either case such that the conditions set forth in Section 6.3(a) or Section 6.3(b) would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate, provided that if such inaccuracy in Parent's representations and warranties or breach by Parent is curable by Parent prior to the Outside Date, then this Agreement shall not terminate pursuant to this Section 7.1(h) as a result of such particular breach or inaccuracy until the earlier of (i) the expiration of a thirty (30) day period commencing upon delivery of written notice from the Company to Parent of such breach or inaccuracy, and (ii) Parent ceasing to exercise commercially reasonable efforts to cure such breach (it being understood that this Agreement shall not terminate pursuant to this Section 7.1(h) as a result of such particular breach or inaccuracy if such breach by Parent is cured prior to such termination becoming effective); provided, further, that the Company shall not have the right to terminate this Agreement pursuant to this Section 7.1(h) if the Company is then in material breach of any representation, warranty, covenant or obligation hereunder, which breach has not been cured;

(i) by Parent, upon a breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, or if any representation or warranty of the Company shall have become inaccurate, in either case such that the conditions set forth in Section 6.2(a) or Section 6.2(b) would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate, provided that if such inaccuracy in the Company's representations and warranties or breach by the Company is curable by the Company prior to the Outside Date, then this Agreement shall not terminate pursuant to this Section 7.1(i) as a result of such particular breach or inaccuracy until the earlier of (i) the expiration of a 30 day period commencing upon delivery of written notice from Parent to the Company of such breach or inaccuracy, and (ii) the Company ceasing to exercise commercially reasonable efforts to cure such breach (it being understood that this Agreement shall not terminate pursuant to this Section 7.1(i) as a result of such particular breach or inaccuracy if such breach by the Company is cured prior to such termination becoming effective); provided, further, that Parent shall not have the right to terminate this Agreement pursuant to this Section 7.1(i) if Parent is then in material breach of any representation, warranty, covenant or obligation hereunder, which breach has not been cured;

(j) by the Company (at any time prior to the Company Stockholder Approval) if each of the following occur: (A) the Company shall have received a Company Superior Offer, (B) the Company shall have complied with its obligations under Section 4.5(a) in order to accept such Company Superior Offer, (C) the Board of Directors of Company approves, and the Company concurrently with the termination of this Agreement enters into, a definitive agreement with respect to such Company Superior Offer, and (D) prior to or concurrently with such termination, the Company pays to the Company the amount contemplated by Section 7.3(d); or

(k) by Parent (at any time prior to the Parent Stockholder Approval) if each of the following occur: (A) Parent shall have received a Parent Superior Offer, (B) Parent shall have complied with its obligations under Section 4.5(b) in order to accept such Parent Superior Offer, (C) the Board of Directors of Parent approves, and Parent concurrently with the termination of this Agreement enters into, a definitive agreement with respect to such Parent Superior Offer, and (D) prior to or concurrently with such termination, Parent pays to the Company the amount contemplated by Section 7.3(d).

Section 7.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 7.1, written notice thereof shall be given to the other party or parties, specifying the provisions hereof pursuant to which such termination is made and describing the basis therefor in reasonable detail, and this Agreement shall be of no further force or effect; provided, however, that (a) this Section 7.2, Section 5.8, Section 7.3 and Article 8 and the definitions of the defined terms contained in such Sections and the Confidentiality Agreement shall survive the termination of this Agreement and shall remain in full force and effect, and (b) the termination of this Agreement shall not relieve any Party from any liability or damages resulting from or arising out of any fraud or willful or intentional breach of any representation, warranty, covenant, obligation or other provision contained in this Agreement.

Section 7.3 Expenses; Termination Fees.

(a) Except as set forth in this Section 7.3, all fees and expenses incurred in connection with this Agreement and the Contemplated Transactions shall be paid by the Party incurring such expenses, whether or not the Merger or the Contemplated Transactions are consummated; provided, however, that Parent shall bear all Transfer Taxes in connection with the transactions contemplated by this Agreement.

(b) If this Agreement is terminated by either the Company or Parent pursuant to Section 7.1(e) or by the Company pursuant to Section 7.1(f) or Section 7.1(h), Parent shall pay to the Company (by wire transfer of immediately available funds to an account designated in writing by the Company) within two (2) Business Days after termination of the Agreement an amount equal to the total documented expenses incurred by the Company in connection with the negotiation and execution of this Agreement and the Contemplated Transactions, not to exceed $600,000 in the aggregate.

(c) If this Agreement is terminated by either Parent or the Company pursuant to Section 7.1(d) or by Parent pursuant to Section 7.1(g) or Section 7.1(i), the Company shall pay to Parent (by wire transfer of immediately available funds to an account designated in writing by Parent) within two (2) Business Days after termination of the Agreement an amount equal to the total documented expenses incurred by Parent in connection with the negotiation and execution of this Agreement and the Contemplated Transactions, not to exceed $600,000 in the aggregate.

(d) If this Agreement is terminated by the Company pursuant to Section 7.1(j), then, substantially concurrently with and as a condition to the effectiveness of such termination, the Company shall pay or cause to be paid to Parent (i) a termination fee of $750,000 and (ii) an amount equal to the total documented expenses incurred by Parent in connection with the negotiation and execution of this Agreement and the Contemplated Transactions, not to exceed $600,000 in the aggregate (collectively, the "***Company Termination Fee***").

(e) If this Agreement is terminated by Parent pursuant to Section 7.1(k), then, substantially concurrently with and as a condition to the effectiveness of such termination, Parent shall pay or cause to be paid to the Company (i) a termination fee of $750,000 and (ii) an amount equal to the total documented expenses incurred by the Company in connection with the negotiation and execution of this Agreement and the Contemplated Transactions, not to exceed $600,000 in the aggregate (collectively, the "***Parent Termination Fee***").

(f) If (i) this Agreement is terminated: (x) by Parent or the Company pursuant to Section 7.1(b) or Section 7.1(e), or (y) by Parent pursuant to Section 7.1(g), or Section 7.1(i), (ii) a Company Acquisition Proposal has been publicly disclosed at any time after the date of this Agreement and prior to the Company Stockholder Meeting (and not publicly withdrawn prior to the date of the Company Stockholder Meeting) and (iii) within twelve (12) months after the date of such termination, the Company enters into a definitive agreement with respect to any Company Acquisition Proposal which is consummated (whether or not within the twelve (12)-month period), then within one (1) business day after the date any such Company Acquisition Proposal is consummated, the Company will pay or cause to be paid to Parent the Company Termination Fee (minus any amount paid by the Company pursuant to Section 7.3(c)); provided, however, that for purposes of this Section 7.3(f), the references to "fifteen (15%)" in the definition of Company Acquisition Proposal shall be deemed to be references to "fifty percent (50%)".

(g) If (i) this Agreement is terminated: (x) by Parent or the Company pursuant to Section 7.1(b) or Section 7.1(d), or (y) by the Company pursuant to Section 7.1(f) or Section 7.1(h), (ii) a Parent Acquisition Proposal has been publicly disclosed at any time after the date of this Agreement and prior to the Parent Stockholder Meeting (and not publicly withdrawn prior to the date of the Parent Stockholder Meeting) and (iii) within twelve (12) months after the date of such termination Parent enters into a definitive agreement with respect to any Parent Acquisition Proposal which is consummated (whether or not within the twelve (12)-month period), then within one (1) business day after the date any such Parent Acquisition Proposal is consummated, Parent will pay or cause to be paid to the Company the Parent Termination Fee (minus any amount paid by Parent pursuant to Section 7.3(b)); provided, however, that for purposes of this Section 7.3(g), the references to "fifteen (15%)" in the definition of Parent Acquisition Proposal shall be deemed to be references to "fifty percent (50%)".

(h) If this Agreement is terminated by Parent or the Company pursuant to Section 7.1(b) solely as a result of the failure to satisfy the NASDAQ Condition, then within two (2) Business Days after termination of the Agreement, the Company will pay or cause to be paid to Parent the Company Termination Fee plus an additional fee of $850,000.

(i) The Parent Termination Fee shall be paid by wire transfer of immediately available funds to an account designated in writing by the Company. In no event will Parent be obligated to pay the Parent Termination Fee on more than one occasion. The Company Termination Fee shall be paid by wire transfer of immediately available funds to an account designated in writing by Parent. In no event will the Company be obligated to pay the Company Termination Fee on more than one occasion.

(j) Each of the Parties acknowledges that (i) the agreements contained in this Section 7.3 are an integral part of the transactions contemplated by this Agreement, (ii) each of the Parent Termination Fee and the Company Termination Fee is not a penalty, but is liquidated damages, in a reasonable amount that will compensate the applicable Party in the circumstances in which such fee is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Contemplated Transactions, which amount would otherwise be impossible to calculate with precision, and (iii) without these agreements, the Parties would not enter into this Agreement; accordingly, if either Party fails to pay when due any amount payable by such Party under this Section 7.3, then such Party shall reimburse the other Party for reasonable costs and expenses (including reasonable fees and disbursements of counsel) incurred in connection with the collection of such overdue amount and the enforcement by the other Party of its rights under this Section 7.3.

ARTICLE 8
MISCELLANEOUS PROVISIONS

Section 8.1 **Non-Survival of Representations and Warranties**. The representations and warranties of the Company and Parent contained in this Agreement or any certificate or instrument delivered pursuant to this Agreement shall terminate at the Effective Time, and only the covenants that by their terms survive the Effective Time and this Article 8 shall survive the Effective Time.

Section 8.2 **Amendment**. This Agreement may be amended with the approval of the respective Board of Directors of each of the Company and Parent at any time (whether before or after the Company Stockholder Approval or before or after the Parent Stockholder Approval); provided, however, that after any such adoption and approval of this Agreement by a Party's stockholders, no amendment shall be made which by Law requires further approval of the stockholders of such Party without the further approval of such stockholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Company and Parent.

Section 8.3 **Waiver.**

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

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

Section 8.4 **Entire Agreement**. This Agreement and the other agreements referred to in this Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof and thereof; provided, however, that the Confidentiality Agreement shall not be superseded and shall remain in full force and effect in accordance with its terms.

Section 8.5 **Counterparts; Exchanges Electronic Transmission**. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by all Parties by electronic transmission via ".pdf" shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

Section 8.6 **Applicable Law; Jurisdiction**. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of Laws. In any action or proceeding between any of the parties arising out of or relating to this Agreement or any of the Contemplated Transactions, each of the parties: (i) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware, (ii) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in accordance with clause (i) of this Section 8.6, (iii) waives any objection to laying venue in any such action or proceeding in such courts, (iv) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any party, and (v) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 8.9 of this Agreement.

Section 8.7 **Attorneys' Fees**. In any action at Law or suit in equity to enforce this Agreement or the rights of any of the parties under this Agreement, the prevailing Party in such action or suit shall be entitled to receive a reasonable sum for its attorneys' fees and all other reasonable costs and expenses incurred in such action or suit.

Section 8.8 **Assignability**. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that neither this Agreement nor any of a Party's rights or obligations hereunder may be assigned or delegated by such Party without the prior written consent of the other Party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by such Party without the other Party's prior written consent shall be void and of no effect. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than: (a) the parties hereto, and (b) the directors and officers of the Company referred to in Section 5.6(a) to the extent of their respective rights pursuant to Section 5.6) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.9 **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 when delivered by hand, by registered mail, by courier or express delivery service or by facsimile to the address or facsimile telephone number set forth beneath the name of such Party below (or to such other address or facsimile telephone number as such Party shall have specified in a written notice given to the other parties hereto):

if to Parent or Merger Sub:

MYnd Analytics, Inc.
26522 La Alameda, Suite 290
Mission Viejo, CA 92691
Attention: Patrick Herguth
Email: pherguth@myndanalytics.com

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Email: jeffrey.baumel@dentons.com
ilan.katz@dentons.com
Attention: Jeffrey A. Baumel, Esq.
Ilan Katz, Esq.

if to the Company:

Emmaus Life Sciences, Inc.
21250 Hawthorne Boulevard
Suite 800, Torrance, CA 90503
Attention: Chief Executive Officer
Email: yniihara@emmauslifesciences.com

with a copy to:

Emmaus Life Sciences, Inc.
21250 Hawthorne Boulevard
Suite 800, Torrance, CA 90503
Attention: General Counsel
Email: dshort@emmauslifesciences.com

Section 8.10 Cooperation. Each Party agrees to cooperate fully with the other Party and to execute and deliver such further documents, certificates, agreements and instruments and to take such other actions as may be reasonably requested by the other Party to evidence or reflect the Contemplated Transactions and to carry out the intent and purposes of this Agreement.

Section 8.11 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

Section 8.12 Other Remedies; Specific Performance. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being the addition to any other remedy to which they are entitled at Law or in equity.

Section 8.13 Construction.

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

(b) The Parties are each represented by legal counsel and have participated jointly in the negotiation and drafting of this Agreement and the agreements contemplated hereby. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation." The words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or paragraph hereof.

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

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

(f) Any reference to any Laws will be deemed also to refer to such Laws and all rules and regulations promulgated thereunder, in each case as amended, modified, codified, replaced or reenacted, in whole or in part.

(g) A reference to any Person in this Agreement or any other agreement or document shall include such Person's predecessors-in-interest, successors and permitted assigns.

(h) Each accounting term used herein that is not specifically defined herein shall have the meaning given to it under GAAP.

Section 8.14 Definitions. As used in this Agreement (except as specifically otherwise defined):

"**Additional Company Financial Statements**" has the meaning set forth in Section 5.1(b).

"**Affiliate**" means with respect to any Person, any other Person controlling, controlled by, or under common control with such Person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of power to direct or cause the direction of the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the Preamble.

"**Anticorruption Laws**" means the FCPA and all similar anti-bribery Laws applicable to the Company or the Parent and its Subsidiaries, as applicable.

"**Business Day**" means any day other than (a) a Saturday or Sunday, or (b) a day on which banking and savings and loan institutions are authorized or required by Laws to be closed in the State of California.

"**Certificate of Merger**" has the meaning set forth in Section 1.3.

"**Certificates**" has the meaning set forth in Section 1.8(a).

"**Closing**" has the meaning set forth in Section 1.3.

"**Closing Date**" has the meaning set forth in Section 1.3.

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

"**Company**" has the meaning set forth in the Preamble.

"**Company Acceptable Confidentiality Agreement**" has the meaning set forth in Section 4.5(a).

"**Company Acquisition Proposal**" has the meaning set forth in Section 4.5(a)(ii).

"**Company Allocation Certificate**" has the meaning set forth in Section 5.15(a).

"**Company Ancillary Lease Documents**" means all subleases, overleases and other ancillary agreements or documents pertaining to the tenancy at each such parcel of the Company Leased Real Property the material breach or invalidity of which has had, or would reasonably be expected to have, a Company Material Adverse Effect.

"**Company Board Recommendation**" has the meaning set forth in Section 5.2(a).

"**Company Bylaws**" means the bylaws of the Company, as amended and in effect on the date hereof.

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

"**Company Change of Recommendation**" has the meaning set forth in Section 4.5(a).

"**Company Charter**" means the Certificate of Incorporation of the Company, as amended and in effect on the date hereof.

"**Company Common Stock**" means the common stock, $0.001 par value per share, of the Company.

"**Company Contingent Workers**" has the meaning set forth in Section 2.15(b).

"**Company Contract**" and "**Company Contracts**" means each and every Contract together with any amendments, waivers or other modifications thereto, to which the Company is a party.

"**Company Convertible Notes**" means promissory notes of the Company which by their terms are convertible into shares of Company Common Stock.

"**Company Copyrights**" has the meaning set forth in Section 2.9(a).

"**Company Debentures**" means the outstanding 10% Senior Secured Debentures Due April 21, 2020 of the Company.

"**Company Disclosure Schedule**" has the meaning set forth in Article 2.

"**Company Employee Program**" has the meaning set forth in Section 2.14(a).

"**Company Financial Statements**" has the meaning set forth in Section 2.5(c).

"**Company Fundamental Representations**" means the representations and warranties of the Company set forth in Section 2.1, Section 2.2, Section 2.3 and Section 2.24.

"**Company In-Licenses**" has the meaning set forth in Section 2.9(a).

"**Company Intellectual Property**" means all Intellectual Property owned by the Company or used or held for use by the Company in the Company's business. "Company Intellectual Property" includes, without limitation, Company Patents, Company Marks, Company Copyrights and Company Trade Secrets.

"**Company Intervening Event**" means a material development or change in circumstances (other than a Company Acquisition Proposal) that affects the business, assets or operations of the Company that occurs or arises after the date of this Agreement that was neither known to the Company or the Board of Directors of the Company nor reasonably foreseeable as of the date of this Agreement.

"**Company Lease**" means the lease, license, sublease or other occupancy agreements and all amendments, modifications, supplements, and assignments thereto, together with all exhibits, addenda, riders and other documents constituting a part thereof for each parcel of the Company Leased Real Property.

"**Company Leased Real Property**" means the real property leased, subleased or licensed by the Company or any of its Subsidiaries that is related to or used in connection with the Company's business, and the real property leased, subleased or licensed by the Company or any of its Subsidiaries as tenant, subtenant, licensee or other similar party, together with, to the extent leased, licensed or owned by the Company or any of its Subsidiaries, all buildings and other structures, facilities or leasehold improvements, currently or hereafter located thereon.

"**Company Lock-up Agreements**" has the meaning set forth in the Recitals.

"**Company Marks**" has the meaning set forth in Section 2.9(a).

"**Company Material Adverse Effect**" means any change, circumstance, condition, development, effect, event, occurrence, result or state of facts that, individually or when taken together with any other such change, circumstance, condition, development, effect, event, occurrence, result or state of facts, has or would reasonably be expected to (a) have a material adverse effect on the business, financial condition, assets, liabilities or results of operations of the Company, or (b) prevent or materially delay the ability of Company to consummate the Contemplated Transactions, except that "Company Material Adverse Effect" shall not include any change, circumstance, condition, development, effect, event, occurrence, result or state of facts, directly or indirectly, arising out of or attributable to: (i) any rejection by a Governmental Authority of a marketing approval application, registration or other filing by the Company relating to the Company Intellectual Property; (ii) changes in general economic or political conditions or the securities market in general (whether as a result of acts of terrorism, war (whether or not declared), armed conflicts or otherwise) to the extent they do not disproportionately affect the Company, (iii) changes in or affecting the industries in which the Company operates to the extent they do not disproportionately affect the Company in any material respect, (iv) changes, effects or circumstances resulting from the announcement or pendency of this Agreement or the consummation of the Contemplated Transactions or compliance with the terms of this Agreement, (v) any specific action taken at the written request of Parent or Merger Sub or required by this Agreement, (vi) any changes in applicable Laws or accounting rules, (vii) continued losses from operations or increases in liabilities or decreases in cash balances of the Company not materially inconsistent with kind and degree of losses from operations and increases in liabilities and decreases in cash balances which have occurred between December 31, 2017 and the date of this Agreement; (viii) any failure by the Company to meet any projections, forecasts or revenue or earnings projections, (ix) any natural or man-made disaster or acts of God or acts of war or terrorism, or (x) any reductions, either voluntary or involuntary, in the Company's workforce.

"**Company Material Contract**" has the meaning set forth in Section 2.10.

"**Company Net Cash Schedule**" has the meaning set forth in Section 5.4(a).

"**Company Notice Period**" has the meaning set forth in Section 4.5(a)(iv).

"**Company Out-Licenses**" has the meaning set forth in Section 2.9(a).

"**Company Owned Real Property**" means the real property in which the Company has any fee title (or equivalent).

"**Company Patents**" has the meaning set forth in Section 2.9(a).

"**Company Permits**" has the meaning set forth in Section 2.12(b).

"**Company Preferred Stock**" means the preferred stock, $0.001 par value per share, of the Company.

"**Company Qualified Bidder**" has the meaning set forth in Section 4.5(a)(i).

"**Company Regulatory Agency**" has the meaning set forth in Section 2.12(b).

"**Company SEC Reports**" has the meaning set forth in Section 2.5(a).

"**Company Stock Certificate**" has the meaning set forth in Section 1.7.

"**Company Stock Option Plan**" means the Emmaus Life Sciences, Inc. Amended and Restated 2011 Stock Incentive Plan.

"**Company Stock Options**" means options to purchase Company Common Stock issued under any of the Company Stock Option Plan.

"**Company Stockholder Approval**" has the meaning set forth in Section 2.23.

"**Company Stockholder Proposal**" has the meaning set forth in Section 5.5.

"**Company Stockholders**" means holders of capital stock of the Company.

"**Company Superior Offer**" has the meaning set forth in Section 4.5(a)(ii).

"**Company Trade Secrets**" has the meaning set forth in Section 2.9(k).

"**Company Voting Agreements**" has the meaning set forth in the Recitals.

"**Company Warrants**" means the outstanding warrants to purchase Company Common Stock.

"**Confidentiality Agreement**" means that certain confidential disclosure agreement, dated as of October 8, 2018, by and between the Company and Parent.

"**Contemplated Transactions**" means the transactions proposed under this Agreement and the Spinoff Agreement, including the Merger, the Reverse Stock Split, the adoption of the New Equity Incentive Plan, the Spinoff, any Permitted Asset Sale, Permitted Company Issuance, Permitted Company Reorganization or Permitted Parent Reorganization.

"**Contract**" means any loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, development agreement or other contract, agreement, arrangement, understanding, obligation, commitment or instrument that is legally binding, whether written or oral.

"**Converted Notes**" has the meaning set forth in Section 1.8(a).

"**DGCL**" means the Delaware General Corporation Law.

"**Dissenting Shares**" has the meaning set forth in Section 1.9(a).

"**Effective Time**" has the meaning set forth in Section 1.3.

"**Employee Program**" means (A) all employee benefit plans within the meaning of ERISA Section 3(3), including multiple employer welfare arrangements (within the meaning of ERISA Section 3(40)), plans to which more than one unaffiliated employer contributes and employee benefit plans (such as foreign or excess benefit plans) which are not subject to ERISA, and (B) all employment, consulting, salary, equity and equity-based compensation, retention, bonus, incentive, severance, deferred compensation, supplemental income, vacation, profit sharing, executive compensation, change in control, material fringe benefit, vacation, retiree benefit, health or other medical, dental, life, disability or other insurance plan, program, agreement or arrangement and all other written employee benefit plans, agreements, and arrangements not described in (A) above, including without limitation, any arrangement intended to comply with Code Section 120, 125, 127, 129 or 137. In the case of an Employee Program funded through a trust described in Code Section 401(a) or an organization described in Code Section 501(c)(9), or any other funding vehicle, each reference to such Employee Program shall include a reference to such trust, organization or other vehicle.

"**Encumbrance**" means any mortgage, deed of trust, pledge, security interest, attachment, hypothecation, lien (statutory or otherwise), violation, charge, lease, license, option, right of first offer, right of first refusal, encumbrance, servient easement, deed restriction, adverse claim, reversion, preferential arrangement, restrictive covenant, condition or restriction of any kind or charge of any kind (including any conditional sale or title retention agreement or lease in the nature thereof) or any agreement to file any of the foregoing, any sale of receivables with recourse against either the Company or Parent, as the case may be, or any subsidiary, stockholder or Affiliate thereof, and any filing or agreement to file any financing statement as debtor under the Uniform Commercial Code or any similar statute.

"**Environment**" means soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata and ambient air and biota living in or on such media.

"**Environmental Laws**" means Laws relating to protection of the Environment or the protection of human health as it relates to the Environment, including the federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Endangered Species Act and similar foreign, federal, state and local Laws as in effect on the Closing Date.

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

"**ERISA Affiliate**" has the meaning ascribed thereto in Section 2.14(e)(i).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Exchange Agent**" means an exchange agent to be engaged by mutual agreement of the Company and Parent.

"**Exchange Fund**" has the meaning set forth in Section 1.8(a).

"**Exchange Ratio**" means a number, which shall be mutually agreed upon by Parent and the Company based upon the Company Allocation Certificate and the Parent Capitalization Certificate, which will cause the holders of shares of Company Common Stock, Company Stock Options (including shares issued or issuable upon exercise of the Company Stock Options), Company Warrants (including shares issued or issuable upon exercise of the Company Warrants) and Company Convertible Notes (including shares issued or issuable upon exercise of the Company Convertible Notes), in the aggregate, in each case outstanding immediately prior to the Effective Time and giving effect to any and all Permitted Parent Reorganizations, Permitted Company Reorganizations, Permitted Company Issuances and Permitted Parent Issuances, to own beneficially 94.1% of the fully diluted equity of Parent immediately following the Effective Time.

"**FDA**" has the meaning set forth in Section 2.12(b).

"**FDCA**" has the meaning set forth in Section 2.12(b).

"**Form S-4 Registration Statement**" means the registration statement on Form S-4 to be filed with the SEC by Parent in connection with issuance of Parent Common Stock in the Merger, as said registration statement may be amended prior to the time it is declared effective by the SEC.

"**GAAP**" means generally accepted accounting principles and practices in effect from time to time within the United States applied consistently throughout the period involved.

"**Governmental Authority**" means any U.S. or foreign, federal, state, or local governmental commission, board, body, bureau, or other regulatory authority, agency, including courts and other judicial bodies, or any self-regulatory body or authority, including any instrumentality or entity designed to act for or on behalf of the foregoing.

"**Hazardous Material**" means any pollutant, toxic substance, hazardous waste, hazardous materials, hazardous substances, petroleum or petroleum-containing products as defined in, or listed under, any Environmental Law.

"**Health Care Law**" has the meaning set forth in Section 2.12(c).

"**Indebtedness**" means Liabilities (a) for borrowed money, (b) evidenced by bonds, debentures, notes or similar instruments, (c) upon which interest charges are customarily paid (other than obligations accepted in connection with the purchase of products or services in the Ordinary Course of Business), (d) of others secured by (or which the holder of such Liabilities has an existing right, contingent or otherwise, to be secured by) any Encumbrance or security interest (other than Permitted Encumbrances) on property owned or acquired by the Person in question whether or not the obligations secured thereby have been assumed, (e) under leases required to be accounted for as capital leases under GAAP, (f) all obligations in respect of outstanding letters of credit, (g) guarantees relating to any such Liabilities.

"**Intellectual Property**" means any and all of the following, as they exist throughout the world: (A) patents, patent applications of any kind, patent rights, inventions, discoveries and invention disclosures (whether or not patented) (collectively, "***Patents***"), (B) rights in registered and unregistered trademarks, service marks, trade names, trade dress, logos, packaging design, slogans and Internet domain names, and registrations and applications for registration of any of the foregoing (collectively, "***Marks***"), (C) copyrights in both published and unpublished works, including without limitation all compilations, databases and computer programs, manuals and other documentation and all copyright registrations and applications, and all derivatives, translations, adaptations and combinations of the above (collectively, "***Copyrights***"), (D) rights in know-how, trade secrets, confidential or proprietary information, research in progress, algorithms, data, designs, processes, formulae, drawings, schematics, blueprints, flow charts, models, strategies, prototypes, techniques, beta testing procedures and beta testing results (collectively, "***Trade Secrets***"), (E) any and all other intellectual property rights and/or proprietary rights relating to any of the foregoing, and (F) goodwill, franchises, licenses, permits, consents, approvals, and claims of infringement and misappropriation against third parties.

"**IRS**" means the Internal Revenue Service of the United States.

"**Joint Proxy Statement/Prospectus**" means a Joint Proxy Statement/Prospectus of Parent and the Company and prospectus of Parent to be sent to the stockholders of Parent and the stockholders of the Company (together with any amendments or supplements thereto) in connection with the Merger, the Company Stockholder Proposals and the Parent Stockholder Proposals.

"**Knowledge of Parent**" means the actual knowledge of the chief executive officer and chief financial officer of Parent, after reasonable inquiry by each such individual of each such individual's direct reports and no other inquiry.

"**Knowledge of the Company**" means the actual knowledge of the chief executive officer and chief financial officer of the Company, after reasonable inquiry by each such individual of each such individual's direct reports and no other inquiry.

"**Labor Laws**" means all Laws regarding labor, employment and employment practices, conditions of employment, occupational safety and health, and wages and hours, including any bargaining or other obligations under the National Labor Relations Act.

"**Law**" or "**Laws**" means any federal, state, local, municipal, foreign (including foreign political subdivisions) or other law, Order, statute, constitution, principle of common law or equity, resolution, ordinance, code, writ, edict, decree, consent, approval, concession, franchise, permit, rule, regulation, judicial or administrative ruling, franchise, license, judgment, injunction, treaty, convention or other governmental certification, authorization or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority, and the term "applicable" with respect to such Laws and in the context that refers to one or more Persons means that such Laws apply to such Person or Persons or its or their business, undertaking, property or security and put into effect by or under the authority of a Governmental Authority having jurisdiction over the Person or Persons or its or their business, undertaking, property or security.

"**Legal Proceeding**" means any action, arbitration, cause of action, claim, complaint, criminal prosecution, demand letter, governmental or other examination or investigation, hearing, inquiry, administrative or other proceeding, or notice by any Person alleging potential liability.

"**Liability**" has the meaning set forth in Section 2.11.

"**Merger**" has the meaning set forth in the Recitals.

"**Merger Shares**" means the shares of Parent Common Stock issuable as provided in Section 1.5.

"**Merger Sub**" has the meaning set forth in the Preamble.

"**Multiemployer Plan**" means an employee pension benefit plan or welfare benefit plan described in Section 4001(a)(3) of ERISA.

"**NASDAQ**" means the NASDAQ Capital Market.

"**NASDAQ Condition**" has the meaning set forth in Section 6.1(d).

"**NASDAQ Listing Application**" has the meaning set forth in Section 5.9.

"**Net Cash**" means, as of any particular time, (a) the Company's cash (excluding any restricted cash), cash equivalents and marketable securities, *minus* (b) the aggregate amount of the Liabilities of the Company.

"**Net Liabilities**" has the meaning set forth in Section 5.4(b).

"**New Equity Incentive Plan**" means a new equity incentive plan to be adopted by Parent (or amendments to existing Parent Stock Option Plans), pursuant to which a number of shares of Parent Common Stock to be mutually agreed to by the Company and Parent are to be reserved for issuance after the Closing.

"**Order**" means any judgment, order, writ, injunction, ruling, decision or decree of, or any settlement under the jurisdiction of, any Court or Governmental Authority.

"**Ordinary Course of Business**" means with respect to a Party, the ordinary and usual course of normal day-to-day operations of such Party, consistent with past practice.

"**Parent**" has the meaning set forth in the Preamble.

"**Parent Acceptable Confidentiality Agreement**" has the meaning set forth in Section 4.5(b).

"**Parent Acquisition Proposal**" has the meaning set forth in Section 4.5(b)(ii).

"**Parent Ancillary Lease Documents**" means all subleases, overleases and other ancillary agreements or documents pertaining to the tenancy at each such parcel of the Parent Leased Real Property that materially affect or may materially affect the tenancy at any Parent Leased Real Property.

"**Parent Bylaws**" means the bylaws of Parent, as amended and in effect on the date hereof.

"**Parent California Subsidiary**" means MYnd Analytics, Inc., a California corporation wholly-owned by Parent.

"**Parent Capital Stock**" means the Parent Common Stock and Parent Preferred Stock.

"**Parent Capitalization Certificate**" has the meaning set forth in Section 5.15(b).

"**Parent Change of Recommendation**" has the meaning set forth in Section 4.5(b)(iii).

"**Parent Change of Recommendation Notice**" has the meaning set forth in Section 4.5(b)(iv).

"**Parent Charter**" means the Restated Certificate of Incorporation of Parent, as amended and in effect on the date hereof.

"**Parent Common Stock**" means the common stock, par value $0.001 per share, of Parent.

"**Parent Contingent Workers**" has the meaning set forth in Section 3.15(b).

"**Parent Contract**" means any Contract together with any amendments, waivers or other modifications thereto, to which Parent is a party and which is not intended to be included in the Spinoff Assets.

"**Parent Copyrights**" has the meaning set forth in Section 3.9(a).

"**Parent Disclosure Schedule**" has the meaning set forth in Article 3.

"**Parent Employee Programs**" has the meaning set forth in Section 3.14(a).

"**Parent Financial Statements**" has the meaning set forth in Section 3.5(c).

"**Parent Fundamental Representations**" means the representations and warranties of the Company set forth in Section 3.1, Section 3.2, Section 3.3 and Section 3.24.

"**Parent In-Licenses**" has the meaning set forth in Section 3.9(a).

"**Parent Intellectual Property**" means all Intellectual Property owned by Parent or any of its Subsidiaries or used or held for use by Parent or any of its Subsidiaries other than Intellectual Property which is intended to be included in the Spinoff Assets. "Parent Intellectual Property" includes, without limitation, Parent Patents, Parent Marks, Parent Copyrights and Parent Trade Secrets.

"**Parent Intervening Event**" means a material development or change in circumstances (other than a Parent Acquisition Proposal) that affects the business, assets or operations of Parent that occurs or arises after the date of this Agreement that was neither known to Parent or the Board of Directors of Parent nor reasonably foreseeable as of the date of this Agreement.

"**Parent Leased Real Property**" means the real property leased, subleased or licensed by Parent, or any of its Subsidiaries, and the real property leased, subleased or licensed by Parent or any of its Subsidiaries, in each case, as tenant, subtenant, licensee or other similar party, together with, to the extent leased, licensed or owned by Parent or any of its Subsidiaries, all buildings and other structures, facilities or leasehold improvements, currently or hereafter located thereon, other than real property and the buildings and other structures, facilities or leasehold improvements located thereon which is intended to be included in the Spinoff Assets.

"**Parent Leases**" means the lease, license, sublease or other occupancy agreements and all amendments, modifications, supplements, and assignments thereto, together with all exhibits, addenda, riders and other documents constituting a part thereof for each parcel of Parent Leased Real Property.

"**Parent Lock-up Agreements**" has the meaning set forth in the Recitals.

"**Parent Marks**" has the meaning set forth in Section 3.9(a).

"**Parent Material Adverse Effect**" means any change, circumstance, condition, development, effect, event, occurrence, result or state of facts that, individually or when taken together with any other such change, circumstance, condition, development, effect, event, occurrence, result or state of facts, has or would reasonably be expected to (a) have a material adverse effect on the business, financial condition, assets, liabilities or results of operations of Parent and its Subsidiaries, taken as a whole, or (b) prevent or materially delay the ability of Parent and Merger Sub to consummate the Contemplated Transactions, except that "Parent Material Adverse Effect" shall not include any change, circumstance, condition, development, effect, event, occurrence, result or state of facts, directly or indirectly, arising out of or attributable to: (i) changes in general economic or political conditions or the securities market in general (whether as a result of acts of terrorism, war (whether or not declared), armed conflicts or otherwise) to the extent they do not disproportionately affect Parent and its Subsidiaries, taken as a whole, (ii) changes in or affecting the industries in which Parent operates to the extent they do not disproportionately affect Parent and its Subsidiaries, taken as a whole, in any material respect, (iii) changes, effects or circumstances resulting from the announcement or pendency of this Agreement or the consummation of the Contemplated Transactions or compliance with the terms of this Agreement, (iv) any specific action taken at the written request of the Company or required by this Agreement, (v) any reductions, either voluntary or involuntary, in Parent's workforce, (vi) any changes in applicable Laws or accounting rules, (vii) any natural or man-made disaster or acts of God or acts of war or terrorism, or (viii) any failure by Parent to meet any projections, forecasts or revenue or earnings projections.

"**Parent Material Contract**" has the meaning set forth in Section 3.10.

"**Parent Net Cash Schedule**" has the meaning set forth in Section 5.4(b).

"**Parent Notice Period**" has the meaning set forth in Section 4.5(b)(iv).

"**Parent Out-Licenses**" has the meaning set forth in Section 3.9(a).

"**Parent Owned Real Property**" means the real property in which Parent or any of its Subsidiaries has any fee title (or equivalent).

"**Parent Patents**" has the meaning set forth in Section 3.9(a).

"**Parent Preferred Stock**" means the Series A Preferred Stock, par value $0.001 per share, of Parent and the Series A-1 Preferred Stock par value $0.001 per share, of Parent.

"**Parent Qualified Bidder**" has the meaning set forth in Section 4.5(b)(i).

"**Parent Recommendation**" has the meaning set forth in Section 5.2(b).

"**Parent Restricted Stock Award**" or "**Parent Restricted Stock Awards**" means awards of restricted stock issued under of the Parent Stock Option Plan.

"**Parent SEC Reports**" has the meaning set forth in Section 3.5(a).

"**Parent Stock Option Plans**" means Parent's 2006 Stock Incentive Plan, as amended, and Parent's 2012 Omnibus Incentive Compensation Plan, as amended.

"**Parent Stock Options**" means options to purchase Parent Common Stock issued under the Parent Stock Option Plan.

"**Parent Stockholder Approval**" has the meaning set forth in Section 3.23.

"**Parent Stockholder Meeting**" has the meaning set forth in Section 5.2(b).

"**Parent Stockholder Proposals**" has the meaning set forth in Section 5.2(b).

"**Parent Stockholders**" means the holders of the capital stock of Parent.

"**Parent Superior Offer**" has the meaning set forth in Section 4.5(b)(ii).

"**Parent Trade Secrets**" has the meaning set forth in Section 3.9(k).

"**Parent Voting Agreements**" has the meaning set forth in the Recitals.

"**Parent Warrants**" means the outstanding warrants to purchase Parent Common Stock.

"**Party**" or "**Parties**" means Parent, Merger Sub, and the Company.

"**Permit**" means any franchise, authorization, approval, Order, consent, license, certificate, permit, registration, qualification or other right or privilege.

"**Permitted Asset Sale**" has the meaning set forth in Section 5.5(b).

"**Permitted Company Reorganization**" has the meaning set forth in Section 5.5(d).

"**Permitted Encumbrances**" means (i) Encumbrances for Taxes or other governmental charges, assessments or levies that are not yet due and payable or being contested in good faith by appropriate proceedings, (ii) statutory landlord's, mechanic's, carrier's, workmen's, repairmen's or other similar Encumbrances arising or incurred in the Ordinary Course of Business, the existence of which does not, and would not reasonably be expected to, materially impair the marketability, value or use and enjoyment of the asset subject to such Encumbrances, and (iii) Encumbrances and other conditions, easements and reservations of rights, including rights of way, for sewers, electric lines, telegraph and telephone lines and other similar purposes, and affecting the fee title to any real property leased by Parent or the Company which are of record as of the date of this Agreement and the existence of which does not, and would not reasonably be expected to, materially impair use and enjoyment of such real property, (iv) with respect to any Parent Leased Real Property only, Encumbrances (including Indebtedness) encumbering the fee title interested in any Parent Leased Real Property which are not attributable to Parent and (v) with respect to any Company Leased Real Property only, Encumbrances (including Indebtedness) encumbering the fee title interested in any Company Leased Real Property which are not attributable to the Company. Notwithstanding the foregoing, any Encumbrances for Indebtedness of the Company or Parent as of the Closing will not be a Permitted Encumbrance.

"**Permitted Parent Issuance**" has the meaning set forth in Section 5.5(e).

"**Permitted Parent Reorganization**" has the meaning set forth in Section 5.5(c).

"**Person**" means any individual, corporation, firm, partnership, joint venture, association, trust, company, Governmental Authority, syndicate, body corporate, unincorporated organization, or other legal entity, or any governmental agency or political subdivision thereof.

"**PHSA**" has the meaning set forth in Section 2.12(b).

"**Pre-Closing Period**" has the meaning set forth in Section 4.1.

"**Release**" means any releasing, disposing, discharging, injecting, spilling, leaking, pumping, dumping, emitting, escaping or emptying of a Hazardous Material into the Environment.

"**Representatives**" means the directors, officers, employees, Affiliates, investment bankers, financial advisors, attorneys, accountants, brokers, finders or representatives of the Company, Parent, Merger Sub, or any of their respective Subsidiaries, as the case may be.

"**Retained Liabilities**" has the meaning set forth in Section 5.5(a).

"**Reverse Stock Split**" has the meaning set forth in Section 5.16.

"**S-4 Effective Date**" has the meaning set forth in Section 5.1(a).

"**Sarbanes-Oxley Act**" means the Sarbanes-Oxley Act of 2002.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Spinoff**" has the meaning set forth in Section 5.5(a).

"**Spinoff Agreement**" has the meaning set forth in Section 5.5(a).

"**Spinoff Assets**" has the meaning set forth in Section 5.5(a).

"**Subsidiary**" or "**Subsidiaries**" means, when used with reference to a party, any corporation or other organization, whether incorporated or unincorporated, of which such party or any other subsidiary of such party is a general partner (excluding partnerships the general partnership interests of which held by such party or any subsidiary of such party do not have a majority of the voting interests in such partnership) or serves in a similar capacity, or, with respect to such corporation or other organization, at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"**Surviving Corporation**" has the meaning set forth in Section 1.1.

"**Tax**" or "**Taxes**" means any net or gross income, net or gross receipts, net or gross proceeds, capital gains, capital stock, sales, use, user, leasing, lease, transfer, natural resources, premium, ad valorem, value added, franchise, profits, gaming, license, capital, withholding, payroll or other employment, estimated, goods and services, severance, excise, stamp, fuel, interest equalization, registration, recording, occupation, premium, turnover, personal property (tangible and intangible), real property, escheat, unclaimed or abandoned property, alternative or add-on, windfall or excess profits, environmental (including Section 59A of the Code as in effect for Tax years beginning prior to January 1, 2018), social security, disability, unemployment or other tax or customs duties or amount imposed by (or otherwise payable to) any Taxing Authority, or any interest, any penalties, additions to tax or additional amounts assessed, imposed, or otherwise due or payable under applicable Laws with respect to taxes, in each case, whether disputed or not.

"**Tax Return**" means any report, return, document, declaration, election, schedule or other information or filing, or any amendment thereto, required to be supplied to any Taxing Authority or jurisdiction (foreign or domestic) with respect to Taxes, including information returns and any documents with respect to or accompanying payments of estimated Taxes or requests for the extension of time in which to file any such report, return, document, declaration, or other information.

"**Tax Sharing Agreement**" has the meaning set forth in Section 2.13(h).

"**Taxing Authority**" means any Governmental Authority responsible for the imposition of any Tax.

"**Third Party Intellectual Property**" has the meaning set forth in Section 2.9(f).

"**Transfer Taxes**" means any transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement.

"**WARN Act**" has the meaning set forth in Section 2.15(b).

(Signature Page Follows)

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

MYND ANALYTICS, INC.

By: /s/ Patrick Herguth
Name: Patrick Herguth
Title: Chief Executive Officer

ATHENA MERGER SUBSIDIARY INC.

By: /s/ Patrick Herguth
Name: Patrick Herguth
Title: President

EMMAUS LIFE SCIENCES, INC.

By: /s/ Yutaka Niihara
Name: Yutaka Niihara
Title: CEO & Chairman

Exhibit 10.1

EXECUTION COPY

SEPARATION AND DISTRIBUTION AGREEMENT

This SEPARATION AND DISTRIBUTION AGREEMENT (this "***Agreement***") is made and entered into as of January 4, 2019, by and between MYND ANALYTICS, INC., a Delaware corporation ("***Parent***"), and MYND ANALYTICS, INC., a California corporation and a direct wholly owned subsidiary of Parent ("***MYnd California***"). Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in Article I.

RECITALS

WHEREAS, contemporaneously with the execution of this Agreement, Parent, ATHENA MERGER SUBSIDIARY INC., a Delaware corporation and a direct wholly owned subsidiary of Parent ("***Merger Sub***"), and EMMAUS LIFE SCIENCES, INC., a Delaware corporation (the "***Emmaus***"), are entering into an Agreement and Plan of Merger and Reorganization (the "***Merger Agreement***") pursuant to which Merger Sub will merge with and into Emmaus with Emmaus surviving as a wholly owned subsidiary of Parent (the "***Merger***");

WHEREAS, the execution, delivery of this Agreement, and the consummation of the transactions contemplated by this Agreement are contemplated by the Merger Agreement, and Parent has represented to Emmaus in the Merger Agreement that certain of the transactions contemplated by this Agreement will be consummated prior to or contemporaneously with the closing of the Merger;

WHEREAS, the board of directors of Parent (the "***Parent Board***") has determined that it is in the best interests of Parent and its stockholders to separate the MYnd California Business from Parent (the "***Separation***") and, following the Separation, make a distribution on a pro rata basis, to holders on the Record Date of Parent Shares and Other Parent Securities, of all of the outstanding MYnd California Shares owned by Parent (the "***Distribution***");

WHEREAS, MYnd California and Parent have prepared, and MYnd California will file with the SEC, the Form 10, which will set forth disclosure concerning MYnd California, the Separation and the Distribution; and

WHEREAS, each of Parent and MYnd California has determined that it is appropriate and desirable to set forth the principal corporate transactions required to effect the Separation and the Distribution and certain other agreements that will govern certain matters relating to the Separation and the Distribution and the relationship of Parent and MYnd California following the Distribution.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I.
DEFINITIONS

For the purpose of this Agreement, the following terms shall have the following meanings:

"***Action***" shall mean any demand, action, claim, dispute, suit, countersuit, arbitration, inquiry, subpoena, proceeding or investigation of any nature (whether criminal, civil, legislative, administrative, regulatory, prosecutorial or otherwise) by or before any federal, state, local, foreign or international Governmental Authority or any arbitration or mediation tribunal.

"***Affiliate***" means with respect to any Person, any other Person controlling, controlled by, or under common control with such Person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of power to direct or cause the direction of the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise. It is expressly agreed that, prior to, at and after the Effective Time, for purposes of this Agreement and the Ancillary Agreements, (a) no member of the MYnd California Group shall be deemed to be an Affiliate of any member of the Parent Group and (b) no member of the Parent Group shall be deemed to be an Affiliate of any member of the MYnd California Group.

"***Agent***" shall mean the entity duly appointed by Parent to act as distribution agent, transfer agent and registrar for the MYnd California Shares in connection with the Distribution.

"***Agreement***" shall have the meaning set forth in the Preamble.

"***Ancillary Agreements***" shall mean all agreements (other than this Agreement) entered into by the Parties or the members of their respective Groups (but as to which no Third Party is a party) in connection with the Separation, the Distribution, or the other transactions contemplated by this Agreement.

"***Approvals or Notifications***" shall mean any consents, waivers, approvals, permits or authorizations to be obtained from, notices, registrations or reports to be submitted to, or other filings to be made with, any third Person, including any Governmental Authority.

"***Arbitration Request***" shall have the meaning set forth in Section 9.03(a).

"***Assets***" shall mean, with respect to any Person, the assets, properties, claims and rights (including goodwill) of such Person, wherever located (including in the possession of vendors or other third Persons or elsewhere), of every kind, character and description, whether real, personal or mixed, tangible, intangible or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of such Person, including rights and benefits pursuant to any contract, license, permit, indenture, note, bond, mortgage, agreement, concession, franchise, instrument, undertaking, commitment, understanding or other arrangement.

"***Benefit Plan***" shall mean any contract, agreement, policy, practice, program, plan, trust, commitment or arrangement providing for benefits, perquisites or compensation of any nature from an employer to any MYnd California Employee, or to any family member, dependent, or beneficiary of any such MYnd California Employee, including cash or deferred arrangement plans, profit sharing plans, post-employment programs, pension plans, thrift plans, supplemental pension plans, welfare plans, stock option, stock purchase, stock appreciation rights, restricted stock, restricted stock units, performance stock units, other equity-based compensation and contracts, agreements, policies, practices, programs, plans, trusts, commitments and arrangements providing for terms of employment, fringe benefits, severance benefits, change in control protections or benefits, travel and accident, life, accidental death and dismemberment, disability and accident insurance, tuition reimbursement, adoption assistance, travel reimbursement, vacation, sick, personal or bereavement days, leaves of absences and holidays; provided, however, that the term "Benefit Plan" does not include any government-sponsored benefits, such as workers' compensation, unemployment or any similar plans, programs or policies or Individual Agreements.

"***CEO Negotiation Request***" shall have the meaning set forth in Section 9.02.

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

"***Common Parent***" means the "common parent corporation" of an "affiliated group" (in each case, within the meaning of Section 1504 of the Code) filing a U.S. federal consolidated Income Tax Return.

"***Delayed MYnd California Asset***" shall have the meaning set forth in Section 2.05(b).

"***Delayed MYnd California Liability***" shall have the meaning set forth in Section 2.05(b).

"***Disclosure Document***" shall mean any registration statement (including the Form 10) filed with the SEC by or on behalf of any Party or any member of its Group, and also includes any proxy statement, prospectus, offering memorandum, offering circular, periodic report or similar disclosure document, whether or not filed with the SEC or any other Governmental Authority, in each case that describes the Merger, the Separation or the Distribution or the MYnd California Group or primarily relates to the transactions contemplated hereby.

"***Dispute***" shall have the meaning set forth in Section 9.01.

"***Distribution***" shall have the meaning set forth in the Recitals.

"***Distribution Date***" shall mean the date of the consummation of the Distribution, which shall be determined by the Parent Board in its sole and absolute discretion.

"***Due Date***" means (a) with respect to a Tax Return, the date (taking into account all valid extensions) on which such Tax Return is required to be filed under applicable Law and (b) with respect to a payment of Taxes, the date on which such payment is required to be made to the applicable Taxing Authority to avoid the incurrence of interest, penalties and/or additions to Tax.

"***Effective Time***" shall mean 12:01 a.m., Eastern standard time, on the Distribution Date.

"***Environmental Law***" shall mean any Law relating to pollution, protection or restoration of or prevention of harm to the environment or natural resources, including the use, handling, transportation, treatment, storage, disposal, Release or discharge of Hazardous Materials or the protection of or prevention of harm to human health and safety.

"***Exchange Act***" shall mean the U.S. Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

"***Form 10***" shall mean a registration statement on Form 10 to be filed by MYnd California with the SEC to effect the registration of MYnd California Shares pursuant to the Exchange Act in connection with the Distribution, as such registration statement may be amended or supplemented from time to time prior to the Distribution.

"***Governmental Approvals***" shall mean any Approvals or Notifications to be made to, or obtained from, any Governmental Authority.

"***Governmental Authority***" shall mean any U.S. or non-U.S., federal, state, or local governmental commission, board, body, bureau, or other regulatory authority, agency, including courts and other judicial bodies, or any self-regulatory body or authority, including any instrumentality or entity designed to act for or on behalf of the foregoing.

"***Group***" shall mean either the MYnd California Group or the Parent Group, as the context requires.

"***Hazardous Materials***" shall mean any chemical, material, substance, waste, pollutant, emission, discharge, release or contaminant that could result in Liability under, or that is prohibited, limited or regulated by or pursuant to, any Environmental Law, and any natural or artificial substance (whether solid, liquid or gas, noise, ion, vapor or electromagnetic) that could cause harm to human health or the environment, including petroleum, petroleum products and byproducts, asbestos and asbestos-containing materials, urea formaldehyde foam insulation, electronic, medical or infectious wastes, polychlorinated biphenyls, radon gas, radioactive substances, chlorofluorocarbons and all other ozone-depleting substances.

"***Income Tax Return***" means any Tax Return on which Income Taxes are reflected or reported.

"***Income Taxes***" means any net income, net receipts, net profits, excess net profits or similar Taxes based upon, measured by, or calculated with respect to net income.

"***Indemnifying Party***" shall have the meaning set forth in Section 4.04(a).

"***Indemnitee***" shall have the meaning set forth in Section 4.04(a).

"***Indemnity Payment***" shall have the meaning set forth in Section 4.04(a).

"***Individual Agreement***" shall mean any individual (a) employment contract, or (b) retention, severance or change in control agreement, in each case as in effect immediately prior to the Effective Time.

"***Insurance Proceeds***" shall mean those monies: (i) received by an insured from an insurance carrier or (ii) paid by an insurance carrier on behalf of the insured, in any such case net of any applicable premium adjustments (including reserves and retrospectively rated premium adjustments) and net of any costs or expenses incurred in the collection thereof; provided, however, that with respect to a captive insurance arrangement, Insurance Proceeds shall only include amounts received by the captive insurer in respect of any reinsurance arrangement.

"***Intellectual Property***" shall mean all of the following whether arising under the Laws of the United States (or any state or other jurisdiction thereof) or of any other foreign or multinational jurisdiction: (a) patents, (b) trademarks, (c) copyrights, (d) any other intellectual property rights arising from or in respect of any Technology or Software, and (e) any claims for damages by reason of past infringement, misappropriation, or other unauthorized use of any of the foregoing, with the right to sue for and collect the same.

"***IRS***" means the U.S. Internal Revenue Service.

"***Law***" shall mean any national, supranational, federal, state, provincial, local or similar law (including common law), statute, code, order, ordinance, rule, regulation, treaty (including any Tax treaty), license, permit, authorization, approval, consent, decree, injunction, binding judicial or administrative interpretation or other requirement, in each case, enacted, promulgated, issued or entered by a Governmental Authority.

"***Liabilities***" shall mean all debts, guarantees, assurances, commitments, liabilities, responsibilities, Taxes, Losses, remediation, deficiencies, damages, fines, penalties, settlements, sanctions, costs, expenses, interest and obligations of any nature or kind, whether accrued or fixed, absolute or contingent, matured or unmatured, accrued or not accrued, asserted or unasserted, liquidated or unliquidated, foreseen or unforeseen, known or unknown, reserved or unreserved, or determined or determinable, including those arising under any Law, claim (including any Third-Party Claim), demand, Action, or order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority or arbitration tribunal, and those arising under any contract, agreement, obligation, indenture, instrument, lease, promise, arrangement, release, warranty, commitment or undertaking, or any fines, damages or equitable relief that is imposed, in each case, including all costs and expenses relating thereto.

"***Losses***" shall mean actual losses, costs, damages, penalties and expenses (including reasonable legal and accounting fees and expenses and costs of investigation and litigation), whether or not involving a Third-Party Claim.

"***Mixed Business Tax Return***" means any Tax Return (other than a Parent Consolidated Return), including any consolidated, combined or unitary Tax Return, that reflects or reports Taxes that relate to at least one asset or activity that is part of the Parent Business, on the one hand, and at least one asset or activity that is part of the MYnd California Business, on the other hand.

"***MYnd California***" shall have the meaning set forth in the Preamble.

"***MYnd California Accounts***" shall have the meaning set forth in Section 2.08(a).

"***MYnd California Assets***" shall have the meaning set forth in Section 2.02.

"***MYnd California Balance Sheet***" shall mean the pro forma combined balance sheet of the MYnd California Business, including any notes and subledgers thereto, as of December 31, 2018.

"***MYnd California Business***" shall mean the business, operations and activities of MYnd California related to its telebehavioral health and predictive healthcare operations.

"***MYnd California Contracts***" shall mean the following contracts and agreements to which either Party or any member of its Group is a party or by which it or any member of its Group or any of their respective Assets is bound, whether or not in writing; provided that MYnd California Contracts shall not include any contract or agreement that is contemplated to be retained by Parent or any member of the Parent Group from and after the Effective Time pursuant to any provision of this Agreement or any Ancillary Agreement:

(a) any customer, reseller, distributor or development contract or agreement entered into prior to the Effective Time related to the MYnd California Business;

(b) any supply or vendor contract or agreement entered into prior to the Effective Time related to the MYnd California Business;

(c) any joint venture or partnership contract or agreement that relates to the MYnd California Business as of the Effective Time;

(d) any proprietary information and inventions agreement or similar Intellectual Property assignment or license agreement with any current or former MYnd California Group employee, Parent Group employee, consultant of the MYnd California Group or consultant of the Parent Group, in each case entered into prior to the Effective Time that is related to the MYnd California Business;

(e) any contract or agreement that is expressly contemplated pursuant to this Agreement or any of the Ancillary Agreements to be assigned to, or be a contract or agreement in the name of, MYnd California or any member of the MYnd California Group;

(f) any other contract or agreement related to the MYnd California Business or MYnd California Assets;

(k) MYnd California Leases; and

(l) any contracts, agreements or settlements set forth on Schedule 1.3, including the right to recover any amounts under such contracts, agreements, leases or settlements.

"***MYnd California Group***" shall mean (a) prior to the Effective Time, MYnd California and each Person that will be a Subsidiary of MYnd California as of immediately after the Effective Time, including the Transferred Entities, even if, prior to the Effective Time, such Person is not a Subsidiary of MYnd California; and (b) on and after the Effective Time, MYnd California and each Person that is a Subsidiary of MYnd California.

"***MYnd California Indemnitees***" shall have the meaning set forth in Section 4.03.

"***MYnd California Leases***" shall mean the leases to real property and, to the extent covered by such leases, any and all buildings, structures, improvements and fixtures located thereon, to which MYnd California or a member of the MYnd California Group is party as of the Effective Time set forth on Schedule 1.04.

"***MYnd California Liabilities***" shall have the meaning set forth in Section 2.03(a).

"***MYnd California Name and MYnd California Marks***" shall mean the names, marks, trade dress, logos, monograms, domain names and other source or business identifiers of either Party or any member of its Group that (a) use or contain "MYnd California" (including any stylized versions or design elements thereof) or (b) otherwise identify MYnd California as a whole, either alone or in combination with other words or elements, and all names, marks, trade dress, logos, monograms, domain names and other source or business identifiers confusingly similar to or embodying any of the foregoing, either alone or in combination with other words or elements, together with (y) any common law rights in and to any of the foregoing, any registrations or applications for registration of any of the foregoing, any rights in and to any of the foregoing provided by international treaties or conventions, and any reissues, extensions or renewals of any of the foregoing and (z) the goodwill associated with any of the foregoing.

"***MYnd California Permits***" shall mean all Permits owned or licensed by either Party or any member of its Group primarily used or primarily held for use in the MYnd California Business as of the Effective Time.

"***MYnd California Shares***" shall mean shares of MYnd California common stock, par value $0.001 per share.

"***MYnd California Taxes***" means, without duplication, any and all Liabilities (a) of Parent or any Subsidiary or former Subsidiary of Parent or any of their Affiliates for Taxes resulting from (i) the assets or activities of the MYnd California Business, the MYnd California Assets or the transactions contemplated by this Agreement or (ii) any Permitted Asset Sale or Permitted Parent Reorganization (each as defined in the Merger Agreement) undertaken pursuant to the Merger Agreement, (b) for Taxes of any member of the MYnd California Group for any Pre-Closing Period (including, for the avoidance of doubt, (i) any Straddle Period Taxes allocated to the Pre-Closing Period pursuant to Section 8.06 and (ii) any Taxes resulting from the transactions contemplated by this Agreement), (c) for Taxes of any member of the MYnd California Group resulting from any Permitted Asset Sale or Permitted Parent Reorganization (each as defined in the Merger Agreement) undertaken pursuant to the Merger Agreement, (d) for any Transfer Taxes, (e) for Parent Transaction Taxes and (f) for the avoidance of any doubt, any Taxes of MYnd California or any Affiliate thereof for a Post-Closing Period (including any Straddle Period Taxes allocated to the Post-Closing Period pursuant to Section 8.06); provided, however, that MYnd California Taxes shall not include any Taxes that arise as a result of any actions taken by Parent or any Affiliate of Parent on or after the Closing Date of the Merger, that are outside of the ordinary course, other than, for the avoidance of any doubt, any Taxes of Parent or any Subsidiary or former Subsidiary of Parent or any of their Affiliates or any member of the MYnd California Group or any of their Affiliates arising as a result of the transactions contemplated by this Agreement, including the Section 336(e) Election.

"***Nasdaq***" shall mean the Nasdaq Capital Market.

"***Offer Negotiation Request***" shall have the meaning set forth in Section 9.01.

"***Other Parent Securities***" shall mean the other outstanding securities of the Parent described on Schedule 1.2 which are entitled to participate in the distribution of the MYnd California Shares on a pro rata basis together with the holders of Parent Shares as of the Record Date.

"***Parent***" shall have the meaning set forth in the Preamble.

"***Parent Accounts***" shall have the meaning set forth in Section 2.08(a).

"***Parent Board***" shall have the meaning set forth in the Recitals.

"***Parent Business***" shall mean the business of Emmaus to be carried on by Parent after the Effective Time.

"***Parent Consolidated Return***" means the U.S. federal Income Tax Return filed or required to be filed by Parent as the Common Parent.

"***Parent Consolidated Taxes***" means any U.S. federal Income Taxes attributable to any Parent Consolidated Return.

"***Parent Group***" shall mean Parent and each Person that is a Subsidiary of Parent (other than MYnd California and any other member of the MYnd California Group).

"***Parent Indemnitees***" shall have the meaning set forth in Section 4.02.

"***Parent Liabilities***" shall have the meaning set forth in Section 2.03(b).

"***Parent Shares***" shall mean shares of Parent common stock, par value $0.001 per share.

"***Parent Taxes***" means, without duplication, other than MYnd California Taxes: (a) any Parent Consolidated Taxes, (b) any Taxes imposed on MYnd California or any member of the MYnd California Group under Treasury Regulations Section 1.1502-6 (or any similar provision of other Law) as a result of MYnd California or any such member being or having been included as part of a Parent Consolidated Return (or similar consolidated or combined Tax Return under any other provision of Law) on or prior to the Distribution Date, (c) any Taxes of the Parent Group and any former Subsidiary of Parent (excluding any member of the MYnd California Group) for any Pre-Closing Period (including any Straddle Period Taxes allocated to the Pre-Closing Period pursuant to Section 8.06), and (d) for the avoidance of any doubt, any Taxes of Parent or any Affiliate thereof for a Post-Closing Period (including any Straddle Period Taxes allocated to the Post-Closing Period pursuant to Section 8.06).

"***Parent Transaction Taxes***" means any Taxes (a) imposed on or by reason of the Separation or the Distribution and (b) payable by reason of the distribution of cash or other property from Parent to MYnd California (in each case including Transfer Taxes imposed on such transactions described in (a) and (b)). For the avoidance of doubt, Parent Transaction Taxes include, without limitation, Taxes payable by reason of deferred intercompany transactions or excess loss accounts triggered by the Distribution and Taxes attributable to any election under Code Section 336 made in connection with the transactions contemplated by this Agreement.

"***Parties***" or the singular "***Party***" shall mean the parties or a party to this Agreement.

"***Past Practice***" means past practices, accounting methods, elections and conventions.

"***Permits***" shall mean permits, approvals, authorizations, consents, licenses or certificates issued by any Governmental Authority.

"***Person***" shall mean an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

"***Policies***" shall mean insurance policies and insurance contracts of any kind, including but not limited to property, excess and umbrella, commercial general liability, director and officer liability, fiduciary liability, cyber technology professional liability, libel liability, employment practices liability, automobile, aircraft, marine, workers' compensation and employers' liability, employee dishonesty/crime/fidelity, foreign, bonds and self-insurance and captive insurance company arrangements, together with the rights, benefits, privileges and obligations thereunder.

"***Post-Closing Period***" means any taxable period (or portion thereof) beginning after the Distribution Date, including for the avoidance of doubt, the portion of any Straddle Period beginning on the day after the Distribution Date.

"***Pre-Closing Period***" means any taxable period (or portion thereof) ending on or before the Distribution Date, including for the avoidance of doubt, the portion of any Straddle Period ending at the end of the day on the Distribution Date.

"***Privilege***" means any privilege that may be asserted under applicable Law, including any privilege arising under or relating to the attorney-client relationship (including the attorney-client and work product privileges), the accountant-client privilege and any privilege relating to internal evaluation processes.

"***Privileged Information***" shall mean any information, in written, oral, electronic or other tangible or intangible forms, including without limitation any communications by or to attorneys (including attorney-client privileged communications), memoranda and other materials protected by the work product doctrine, as to which a Party or any member of its Group would be entitled to assert or have asserted a privilege or other protection, including the attorney-client and work product privileges.

"***Record Date***" shall mean the close of business on the date to be determined by the Parent Board as the record date for determining holders of Parent Shares and Other Parent Securities entitled to receive MYnd California Shares pursuant to the Distribution.

"***Record Holders***" shall mean the holders of record of Parent Shares and holders of Other Parent Securities as of the Record Date.

"***Refund***" means any refund (or credit in lieu thereof) of Taxes (including any overpayment of Taxes that can be refunded or, alternatively, applied to other Taxes payable), including any interest paid on or with respect to such refund of Taxes by the applicable Taxing Authority; provided, however, that for purposes of this Agreement, the amount of any Refund required to be paid to another Party shall be reduced by (i) the amount of any Taxes imposed on, related to, or attributable to, the receipt or accrual of such Refund, (ii) any reasonable out-of-pocket expenses incurred in obtaining such Refund and (iii) any Tax required to be withheld on such payment to the extent required under Section 2.11 (and subject to, for avoidance of doubt, any limitations on such withholding set forth in Section 2.11).

"***Release***" shall mean any release, spill, emission, discharge, leaking, pumping, pouring, dumping, injection, deposit, disposal, dispersal, leaching or migration of Hazardous Materials into the environment (including, ambient air, surface water, groundwater and surface or subsurface strata).

"***Representatives***" shall mean, with respect to any Person, any of such Person's directors, officers, employees, agents, consultants, advisors, accountants, attorneys or other representatives.

"***Reserve***" shall have the meaning set forth in Section 3.04(c).

"***Reserve Shares***" shall have the meaning set forth in Section 3.04(c).

"***SEC***" shall mean the U.S. Securities and Exchange Commission.

"***Security Interest***" shall mean any mortgage, security interest, pledge, lien, charge, claim, option, right to acquire, voting or other restriction, right-of-way, covenant, condition, easement, encroachment, restriction on transfer, or other encumbrance of any nature whatsoever.

"***Separation***" shall have the meaning set forth in the Recitals.

"***Single Business Return***" means any Tax Return, including any consolidated, combined or unitary Tax Return, that reflects or reports Tax Items relating only to the Parent Business, on the one hand, or the MYnd California Business, on the other (but not both).

"***Software***" shall mean any and all (a) computer programs, including any and all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other form, (b) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (c) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, (d) screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons and (e) documentation, including user manuals and other training documentation, relating to any of the foregoing.

"***Straddle Period***" means any taxable period that begins on or before and ends after the Distribution Date.

"***Subsidiary***" shall mean, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than 50% of (i) the total combined voting power of all classes of voting securities, (ii) the total combined equity interests or (iii) the capital or profit interests, in the case of a partnership, or (b) otherwise has the power to vote, either directly or indirectly, sufficient securities to elect a majority of the board of directors or similar governing body.

"***Tangible Information***" shall mean information that is contained in written, electronic or other tangible forms.

"***Tax***" means any net or gross income, net or gross receipts, net or gross proceeds, capital gains, capital stock, sales, use, user, leasing, lease, transfer, natural resources, premium, ad valorem, value added, franchise, profits, gaming, license, capital, withholding, payroll or other employment, estimated, goods and services, severance, excise, stamp, fuel, interest equalization, registration, recording, occupation, premium, turnover, personal property (tangible and intangible), real property, escheat, unclaimed or abandoned property, alternative or add-on, windfall or excess profits, environmental (including Section 59A of the Code as in effect for Tax years beginning prior to January 1, 2018), social security, disability, unemployment or other tax or customs duties or amount imposed by (or otherwise payable to) any Taxing Authority, or any interest, any penalties, additions to tax or additional amounts assessed, imposed, or otherwise due or payable under applicable Laws with respect to taxes, in each case, whether disputed or not.

"***Tax Group***" means the members of a consolidated, combined, unitary or other tax group (determined under applicable U.S., State or foreign Income Tax law) which includes Parent or MYnd California, as the context requires, but for the avoidance of doubt, (i) Parent's Tax Group does not include any members of the MYnd California Group and (ii) MYnd California's Tax Group does not include any members of the Parent Group.

"***Tax Indemnified Party***" means the Party which is entitled to seek indemnification from the other Party pursuant to the provisions ofArticle VIII.

"***Tax Item***" means any item of income, gain, loss, deduction, credit, recapture of credit or any other item which increases or decreases Taxes paid or payable.

"***Tax Proceeding***" means any audit, assessment of Taxes, other examination by any Taxing Authority, proceeding, appeal of a proceeding or litigation relating to Taxes, whether administrative or judicial, including proceedings relating to competent authority determinations.

"***Tax Return***" means any return, report, certificate, form or similar statement or document (including any related or supporting information or schedule attached thereto and any information return, or declaration of estimated Tax) supplied to, or filed with, or required to be supplied to, or filed with, a Taxing Authority in connection with the payment, determination, assessment or collection of any Tax or the administration of any Laws relating to any Tax and any amended Tax return or claim for refund.

"***Taxing Authority***" means any governmental authority or any subdivision, agency, commission or entity thereof or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

"***Technology***" shall mean all technology, know-how and information, including sales methodologies and processes, training protocols and similar methods and processes, algorithms, apparatus, circuit designs and assemblies, gate arrays, net lists, test vectors, diagrams, models, formulae, inventions, discoveries, innovations, products, services, ideas, concepts, designs, drawings, methods, network configurations and architectures, processes, confidential or proprietary information, trade secrets, protocols, schematics, specifications, subroutines, techniques, URLs, web sites, works of authorship and other forms of technology, in each case whether or not patentable, copyrightable or otherwise registerable, whether or not embodied in any tangible form and including all tangible embodiments of any of the foregoing, including documents, reports, records, instruction manuals, laboratory notebooks, prototypes, samples, surveys, studies and summaries; provided, however, that Technology shall not include any Software.

"***Third Party***" shall mean any Person other than the Parties or any members of their respective Groups.

"***Third-Party Claim***" shall have the meaning set forth in Section 4.05(a).

"***Transfer Documents***" shall have the meaning set forth in Section 2.01(b).

"***Transfer Taxes***" means all sales, use, transfer, real property transfer, intangible, recordation, registration, documentary, stamp or similar Taxes imposed on the Separation or the Distribution.

"***Transferred Entities***" shall mean the entities set forth on Schedule 1.1.

"***Unreleased MYnd California Liability***" shall have the meaning set forth in Section 2.06(b).

ARTICLE II.
THE SEPARATION

Section 2.01 Transfer of Assets and Assumption of Liabilities.

(a) On or prior to the Effective Time, but in any case prior to the Distribution:

(i) Transfer and Assignment of MYnd California Assets. Parent shall contribute, assign, transfer, convey and deliver to MYnd California, and MYnd California shall accept from Parent, all of Parent's direct or indirect right, title and interest in and to all of the MYnd California Assets (it being understood that if any MYnd California Asset shall be held by a Transferred Entity or a wholly owned Subsidiary of a Transferred Entity, such MYnd California Asset may be assigned, transferred, conveyed and delivered to MYnd California as a result of the transfer of all of the equity interests in such Transferred Entity from Parent to MYnd California);

(ii) Acceptance and Assumption of MYnd California Liabilities. MYnd California shall accept, assume and agree faithfully to perform, discharge and fulfill all the MYnd California Liabilities, including MYnd California Liabilities held by Parent, and MYnd California and the applicable members of the MYnd California Group shall be responsible for all MYnd California Liabilities in accordance with their respective terms (it being understood that if any MYnd California Liability is a liability of a Transferred Entity or a wholly owned Subsidiary of a Transferred Entity, such MYnd California Liability may be assumed by MYnd California as a result of the transfer of all of the equity interests in such Transferred Entity from Parent to MYnd California). MYnd California shall be responsible for all MYnd California Liabilities, regardless of when or where such MYnd California Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Effective Time, regardless of where or against whom such MYnd California Liabilities are asserted or determined (including any MYnd California Liabilities arising out of claims made by Parent's or MYnd California's respective directors, officers, employees, agents, Subsidiaries or Affiliates against any member of the Parent Group or the MYnd California Group) or whether asserted or determined prior to the date hereof;

(b) Transfer Documents. In furtherance of the contribution, assignment, transfer, conveyance and delivery of the Assets and the assumption of the Liabilities in accordance with Section 2.01(a), (i) each Party shall execute and deliver, and shall cause the applicable members of its Group to execute and deliver, to the other Party, such bills of sale, quitclaim deeds, stock powers, certificates of title, assignments of contracts and other instruments of transfer, conveyance and assignment as and to the extent necessary to evidence the transfer, conveyance and assignment of all of such Party's and the applicable members of its Group's right, title and interest in and to such Assets to the other Party and the applicable members of its Group in accordance with Section 2.01(a), and (ii) each Party shall execute and deliver, and shall cause the applicable members of its Group to execute and deliver, to the other Party, such assumptions of contracts and other instruments of assumption as and to the extent necessary to evidence the valid and effective assumption of the Liabilities by such Party and the applicable members of its Group in accordance with Section 2.01(a). All of the foregoing documents contemplated by this Section 2.01(b) shall be referred to collectively herein as the "***Transfer Documents***." The Transfer Documents shall effect certain of the transactions contemplated by this Agreement and, notwithstanding anything in this Agreement to the contrary, shall not expand or limit any of the obligations, covenants or agreements in this Agreement. It is expressly agreed that in the event of any conflict between the terms of the Transfer Documents and the terms of this Agreement, the terms of this Agreement shall control.

(c) Misallocations. In the event that at any time or from time to time (whether prior to, at or after the Effective Time), one Party (or any member of such Party's Group) shall receive or otherwise possess any Asset that is allocated to the other Party (or any member of such Party's Group) pursuant to this Agreement or any Ancillary Agreement, such Party shall promptly transfer, or cause to be transferred, such Asset to the Party so entitled thereto (or to any member of such Party's Group), and such Party (or member of such Party's Group) shall accept such Asset. Prior to any such transfer, the Person receiving or possessing such Asset shall hold such Asset in trust for such other Person. In the event that at any time or from time to time (whether prior to, at or after the Effective Time), one Party hereto (or any member of such Party's Group) shall be liable for or otherwise assume any Liability that is allocated to the other Party (or any member of such Party's Group) pursuant to this Agreement or any Ancillary Agreement, such other Party shall promptly assume, or cause to be assumed, such Liability and agree to faithfully perform such Liability.

(d) Intellectual Property Rights. If and to the extent that, as a matter of Law in any jurisdiction, Parent or the applicable members of its Group cannot assign, transfer or convey any of Parent's or such Parent Group members' respective direct or indirect right, title and interest in and to any Technology, Software or Intellectual Property included in the MYnd California Assets, then, to the extent possible, Parent shall, and shall cause the applicable members of its Group to, irrevocably grant to MYnd California an exclusive, irrevocable, assignable, transferable, sublicenseable, worldwide, perpetual, royalty-free license to use, exploit and commercialize in any manner now known or in the future discovered and for whatever purpose, any such right, title or interest.

Section 2.02 MYnd California Assets. Subject to Section 2.05, "***MYnd California Assets***" shall include:

(a) all issued and outstanding capital stock or other equity interests of the Transferred Entities that are owned by either Party or any members of its Group as of the Effective Time;

(b) all Assets of either Party or any members of its Group included or reflected as assets of the MYnd California Group on the MYnd California Balance Sheet, subject to any dispositions of such Assets subsequent to the date of the MYnd California Balance Sheet; provided that the amounts set forth on the MYnd California Balance Sheet with respect to any Assets shall not be treated as minimum amounts or limitations on the amount of such Assets that are included in the definition of MYnd California Assets pursuant to this clause (b);

(c) all Assets of either Party or any of the members of its Group as of the Effective Time that are of a nature or type that would have resulted in such Assets being included as Assets of MYnd California or members of the MYnd California Group on a pro forma combined balance sheet of the MYnd California Group or any notes or subledgers thereto as of the Effective Time (were such balance sheet, notes and subledgers to be prepared on a basis consistent with the determination of the Assets included on the MYnd California Balance Sheet), it being understood that (y) the MYnd California Balance Sheet shall be used to determine the types of, and methodologies used to determine, those Assets that are included in the definition of MYnd California Assets pursuant to this clause (c); and (z) the amounts set forth on the MYnd California Balance Sheet with respect to any Assets shall not be treated as minimum amounts or limitations on the amount of such Assets that are included in the definition of MYnd California Assets pursuant to this clause (iii);

(d) all Assets of either Party or any of the members of its Group as of the Effective Time that are expressly provided by any provision of this Agreement or any Ancillary Agreement as Assets to be transferred to or owned by MYnd California or any other member of the MYnd California Group;

(e) all MYnd California Contracts as of the Effective Time and all rights, interests or claims of either Party or any of the members of its Group thereunder as of the Effective Time;

(f) all MYnd California Permits as of the Effective Time and all rights, interests or claims of either Party or any of the members of its Group thereunder as of the Effective Time;

(g) to the extent not already identified in clauses (a) through (f) of this Section 2.02, all Assets of either Party or any of the members of its Group as of the Effective Time that are used or held for use in the MYnd California Business; and

(h) all rights to the MYnd California Name and MYnd California Marks.

Section 2.03 MYnd California Liabilities; Parent Liabilities.

(a) MYnd California Liabilities. Subject to Section 2.05, for the purposes of this Agreement, "***MYnd California Liabilities***" shall mean the following Liabilities of either Party or any of the members of its Group:

(i) all Liabilities included or reflected as liabilities or obligations of MYnd California or the members of the MYnd California Group on the MYnd California Balance Sheet, subject to any discharge of such Liabilities subsequent to the date of the MYnd California Balance Sheet; provided that the amounts set forth on the MYnd California Balance Sheet with respect to any Liabilities shall not be treated as minimum amounts or limitations on the amount of such Liabilities that are included in the definition of MYnd California Liabilities pursuant to this clause (i);

(ii) all Liabilities as of the Effective Time that are of a nature or type that would have resulted in such Liabilities being included or reflected as liabilities or obligations of MYnd California or the members of the MYnd California Group on a pro forma combined balance sheet of the MYnd California Group or any notes or subledgers thereto as of the Effective Time (were such balance sheet, notes and subledgers to be prepared on a basis consistent with the determination of the Liabilities included on the MYnd California Balance Sheet), it being understood that (x) the MYnd California Balance Sheet shall be used to determine the types of, and methodologies used to determine, those Liabilities that are included in the definition of MYnd California Liabilities pursuant to this clause (ii); and (y) the amounts set forth on the MYnd California Balance Sheet with respect to any Liabilities shall not be treated as minimum amounts or limitations on the amount of such Liabilities that are included in the definition of MYnd California Liabilities pursuant to this clause (ii);

(iii) all Liabilities relating to, arising out of or resulting from the actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to, at or after the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent that such Liabilities relate to, arise out of or result from the MYnd California Business or a MYnd California Asset;

(iv) any and all Liabilities that are expressly provided by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed by MYnd California or any other member of the MYnd California Group, and all agreements, obligations and Liabilities of any member of the MYnd California Group under this Agreement or any of the Ancillary Agreements;

(v) any and all Liabilities relating to, arising out of or resulting from the MYnd California Contracts, or the MYnd California Permits;

(vi) any and all Mynd California Taxes; and

(vii) all Liabilities arising out of claims made by any Third Party (including Parent's or MYnd California's respective directors, officers, stockholders, employees and agents) against any member of the Parent Group or the MYnd California Group to the extent relating to, arising out of or resulting from the MYnd California Business or the MYnd California Assets or the other business, operations, activities or Liabilities referred to in clauses (i) through (vi) above;

(b) Parent Liabilities. For the purposes of this Agreement, "***Parent Liabilities***" shall mean the following Liabilities of either Party or any of the members of its Group:

(i) all Liabilities relating to, arising out of or resulting from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to, at or after the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time) of any member of the Parent Group and, prior to the Effective Time, any member of the MYnd California Group, in each case, to the extent that such Liabilities are not MYnd California Liabilities;

(ii) all Liabilities that are expressly provided by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed by Parent or any other member of the Parent Group, and all agreements, obligations and Liabilities of any member of the Parent Group under this Agreement or any of the Ancillary Agreements;

(iii) all Liabilities arising out of claims made by any Third Party (including Parent's or MYnd California's respective directors, officers, stockholders, employees and agents) against any member of the Parent Group or the MYnd California Group to the extent relating to, arising out of or resulting from the Parent Business or the Parent Group's assets or the other business, operations, activities or Liabilities referred to in clauses (i) through (ii) above, in each case, to the extent that such Liabilities are not MYnd California Liabilities; and

(iv) any and all Parent Taxes.

Section 2.04 Approvals and Notifications for MYnd California Assets. To the extent that the transfer or assignment of any MYnd California Asset, the assumption of any MYnd California Liability, the Separation, or the Distribution requires any Approvals or Notifications, the Parties shall use their commercially reasonable efforts to obtain or make such Approvals or Notifications as soon as reasonably practicable; provided, however, that, except to the extent expressly provided in this Agreement or any of the Ancillary Agreements or as otherwise agreed between Parent and MYnd California, neither Parent nor MYnd California shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person in order to obtain or make such Approvals or Notifications.

Section 2.05 Delayed MYnd California Transfers.

(a) Delayed MYnd California Transfers. If and to the extent that the valid, complete and perfected transfer or assignment to the MYnd California Group of any MYnd California Asset or assumption by the MYnd California Group of any MYnd California Liability in connection with the Separation or the Distribution would (i) be a violation of applicable Law or regulation, (b) require any Approvals or Notifications that have not been obtained or made by the Effective Time or (c) be, as determined by MYnd California in its sole consent prior to the Effective Time to be detrimental to the Separation or the Distribution or to the MYnd California Group, then, unless the Parties mutually shall otherwise determine, the transfer or assignment to the MYnd California Group of such MYnd California Assets or the assumption by the MYnd California Group of such MYnd California Liabilities, as the case may be, shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Approvals or Notifications have been obtained or made. Notwithstanding the foregoing, any such MYnd California Assets or MYnd California Liabilities shall continue to constitute MYnd California Assets and MYnd California Liabilities for all other purposes of this Agreement.

(b) Treatment of Delayed MYnd California Assets and Delayed MYnd California Liabilities. If any transfer or assignment of any MYnd California Asset (or a portion thereof) or any assumption of any MYnd California Liability (or a portion thereof) intended to be transferred, assigned or assumed hereunder, as the case may be, is not consummated on or prior to the Effective Time, whether as a result of the provisions of Section 2.04 or for any other reason (any such MYnd California Asset (or a portion thereof), a "***Delayed MYnd California Asset***" and any such MYnd California Liability (or a portion thereof), a "***Delayed MYnd California Liability***"), then, insofar as reasonably possible and subject to applicable Law, the member of the Parent Group retaining such Delayed MYnd California Asset or such Delayed MYnd California Liability, as the case may be, shall thereafter hold such Delayed MYnd California Asset or Delayed MYnd California Liability for the use and benefit (or the performance and obligation, in the case of a Liability) of the member of the MYnd California Group entitled thereto (at the expense of the member of the MYnd California Group entitled thereto). In addition, the member of the Parent Group retaining such Delayed MYnd California Asset or such Delayed MYnd California Liability shall, insofar as reasonably possible and to the extent permitted by applicable Law, treat such Delayed MYnd California Asset or Delayed MYnd California Liability in the ordinary course of business in accordance with past practice and take such other actions as may be reasonably requested by the member of the MYnd California Group to whom such Delayed MYnd California Asset is to be transferred or assigned, or which will assume such Delayed MYnd California Liability, as the case may be, in order to place such member of the MYnd California Group in a substantially similar position as if such Delayed MYnd California Asset or Delayed MYnd California Liability had been transferred, assigned or assumed as contemplated hereby and so that all the benefits and burdens relating to such Delayed MYnd California Asset or Delayed MYnd California Liability, as the case may be, including use, risk of loss, potential for gain, and dominion, control and command over such Delayed MYnd California Asset or Delayed MYnd California Liability, as the case may be, and all costs, Taxes and expenses related thereto, shall inure from and after the Effective Time to the MYnd California Group.

(c) Transfer of Delayed MYnd California Assets and Delayed MYnd California Liabilities. If and when the Approvals or Notifications, the absence of which caused the deferral of transfer or assignment of any Delayed MYnd California Asset or the deferral of assumption of any Delayed MYnd California Liability pursuant to Section 2.05(a), are obtained or made, and, if and when any other legal impediments for the transfer or assignment of any Delayed MYnd California Asset or the assumption of any Delayed MYnd California Liability have been removed, the transfer or assignment of the applicable Delayed MYnd California Asset or the assumption of the applicable Delayed MYnd California Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement.

(d) Costs for Delayed MYnd California Assets and Delayed MYnd California Liabilities. Except as otherwise agreed in writing between the Parties, any member of the Parent Group retaining a Delayed MYnd California Asset or Delayed MYnd California Liability due to the deferral of the transfer or assignment of such Delayed MYnd California Asset or the deferral of the assumption of such Delayed MYnd California Liability, as the case may be, shall not be obligated, in connection with the foregoing, to expend any more than $250,000 in the aggregate, unless the necessary funds in excess of $250,000 are advanced (or otherwise made available) by MYnd California, other than reasonable out-of-pocket expenses, reasonable attorneys' fees and recording or similar fees, all of which and any Taxes imposed on any member of the Parent Group solely as a result of retaining a Delayed MYnd California Asset or Delayed MYnd California Liability shall be promptly reimbursed by MYnd California or the member of the MYnd California Group entitled to such Delayed MYnd California Asset or Delayed MYnd California Liability.

(e) Decisions Regarding Delayed MYnd California Assets and Delayed MYnd California Liabilities.

(i) For so long as Parent continues to own any Delayed MYnd California Asset or Delayed MYnd California Liability, Parent shall take all action required to nominate to its board of directors one Person nominated by MYnd California (the "***MYnd California Director***").

(ii) Until the first anniversary of the Distribution Date, any and all decisions with respect to any transfer, sale or other disposition of any Delayed MYnd California Asset or Delayed MYnd California Liability shall be made only with the consent of the MYnd California Director. During such year, Parent shall use its commercially reasonable efforts to maintain the value of the Delayed MYnd California Assets.

(iii) If any Delayed MYnd California Asset or Delayed MYnd California Liability is sold or transferred to a Third Party on or before the first anniversary of the Distribution Date, subject to Section 2.05(d), any and all net proceeds (in cash or otherwise) from such sale or transfer shall be promptly, and in any case within three (3) business days, be paid or transferred to MYnd California, net of without duplication (i) the amount of any Taxes imposed on, related to, or attributable to, the receipt or accrual of such proceeds, (ii) any reasonable out-of-pocket expenses incurred in obtaining such proceeds and (iii) any Tax required to be withheld on such payment or transfer to the extent required under Section 2.11 (and subject to, for the avoidance of doubt, any limitations on such withholding set forth in Section 2.11).

Section 2.06 Assignment and Novation of MYnd California Liabilities.

(a) Each of Parent and MYnd California, at the request of the other, shall use its commercially reasonable efforts to obtain, or to cause to be obtained, as soon as reasonably practicable, any consent, substitution, approval or amendment required to novate or assign all MYnd California Liabilities and obtain in writing the unconditional release of each member of the Parent Group that is a party to any such arrangements, so that, in any such case, the members of the MYnd California Group shall be solely responsible for such MYnd California Liabilities; provided, however, that, except as otherwise expressly provided in this Agreement or any of the Ancillary Agreements, neither Parent nor MYnd California shall be obligated to contribute any capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any third Person from whom any such consent, substitution, approval, amendment or release is requested.

(b) If Parent or MYnd California is unable to obtain, or to cause to be obtained, any such required consent, substitution, approval, amendment or release and the applicable member of the Parent Group continues to be bound by such agreement, lease, license or other obligation or Liability (each, an "***Unreleased MYnd California Liability***"), MYnd California shall, to the extent not prohibited by Law, indemnify or guarantee fully all the obligations or other Liabilities of such member of the Parent Group that constitute Unreleased MYnd California Liabilities from and after the Effective Time. If and when any such consent, substitution, approval, amendment or release shall be obtained or the Unreleased MYnd California Liabilities shall otherwise become assignable or able to be novated, Parent shall promptly assign, or cause to be assigned, and MYnd California or the applicable MYnd California Group member shall assume, such Unreleased MYnd California Liabilities without exchange of further consideration.

(c) Release of Guarantees. On or prior to the Effective Time or as soon as practicable thereafter, each of Parent and MYnd California shall, with the reasonable cooperation of such other Party and the applicable members of such other Party's Group, use commercially reasonable efforts to have any members of the Parent Group removed as guarantor of or obligor for any MYnd California Liability, other than any MYnd California Liability set forth on Schedule 2.06(c). If Parent or MYnd California is unable to obtain, or to cause to be obtained, any such required removal or release, (i) the Party or the relevant member of its Group that is responsible pursuant to this Agreement for the Liability associated with such guarantee shall indemnify, defend and hold harmless the guarantor or obligor, as applicable, against or from any Liability arising from or relating thereto in accordance with the provisions of Article IV and shall, as agent or subcontractor for such guarantor or obligor, pay, perform and discharge fully all the obligations or other Liabilities of such guarantor or obligor thereunder; and (ii) each of Parent and MYnd California, on behalf of itself and the other members of their respective Group, agree not to renew or extend the term of, increase any obligations under, or transfer to a Third Party, any loan, guarantee, lease, contract or other obligation for which the other Party or a member of its Group is or may be liable unless all obligations of such other Party and the members of such other Party's Group with respect thereto are thereupon terminated by documentation satisfactory in form and substance to such other Party.

Section 2.07 Termination of Agreements.

(a) Except for this Agreement, MYnd California and each member of the MYnd California Group, on the one hand, and Parent and each member of the Parent Group, on the other hand, hereby terminate any and all agreements, arrangements, commitments or understandings, whether or not in writing, between or among MYnd California and/or any member of the MYnd California Group, on the one hand, and Parent and/or any member of the Parent Group, on the other hand, effective as of the Effective Time. No such terminated agreement, arrangement, commitment or understanding (including any provision thereof which purports to survive termination) shall be of any further force or effect after the Effective Time. Each Party shall, at the reasonable request of the other Party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

(b) All of the intercompany accounts receivable and accounts payable between any member of the Parent Group, on the one hand, and any member of the MYnd California Group, on the other hand, outstanding as of the Effective Time, shall be repaid or settled following the Effective Time in the ordinary course of business or, if otherwise mutually agreed prior to the Effective Time by duly authorized representatives of Parent and MYnd California, cancelled.

Section 2.08 Bank Accounts; Cash Balances; Cash Transfers

(a) Each Party agrees to take, or cause the members of its Group to take, at the Effective Time (or such earlier time as the Parties may agree), all actions necessary to amend all contracts or agreements governing each bank and brokerage account owned by MYnd California or any other member of the MYnd California Group (collectively, the "***MYnd California Accounts***") and all contracts or agreements governing each bank or brokerage account owned by Parent or any other member of the Parent Group (collectively, the "***Parent Accounts***") so that each such MYnd California Account and Parent Account, if currently linked (whether by automatic withdrawal, automatic deposit or any other authorization to transfer funds from or to) to any Parent Account or MYnd California Account, respectively, is de-linked from such Parent Account or MYnd California Account, respectively.

(b) It is intended that, following consummation of the actions contemplated by Section 2.09(a), there will be in place a cash management process pursuant to which the MYnd California Accounts will be managed and funds collected will be transferred into one or more accounts maintained by MYnd California or a member of the MYnd California Group.

(c) It is intended that, following consummation of the actions contemplated by Section 2.09(a), there will continue to be in place a cash management process pursuant to which the Parent Accounts will be managed and funds collected will be transferred into one or more accounts maintained by Parent or a member of the Parent Group.

(d) With respect to any outstanding checks issued or payments initiated by Parent, MYnd California, or any of the members of their respective Groups prior to the Effective Time, such outstanding checks and payments shall be honored following the Effective Time by the Person or Group owning the account on which the check is drawn or from which the payment was initiated, respectively.

(e) As between Parent and MYnd California (and the members of their respective Groups), all payments made and reimbursements received after the Effective Time by either Party (or member of its Group) that relate to a business, Asset or Liability of the other Party (or member of its Group), shall be held by such Party in trust for the use and benefit of the Party entitled thereto and, promptly following receipt by such Party of any such payment or reimbursement, such Party shall pay over, or shall cause the applicable member of its Group to pay over to the other Party the amount of such payment or reimbursement net of (i) the amount of any Taxes imposed on, related to, or attributable to, the receipt or accrual of such payment or reimbursement, (ii) any reasonable out-of-pocket expenses incurred in obtaining such payment or reimbursement and (iii) any Tax required to be withheld on such payment to the extent required under Section 2.11 (and subject to, for avoidance of doubt, any limitations on such withholding set forth in Section 2.11).

(f) Cash Transfer at the Effective Time. At the Effective Time, Parent shall contribute from Parent's cash to MYnd California a cash payment in an amount to be determined by Parent and MYnd California prior to the Effective Time. Such amount shall not exceed Parent's cash balance prior to the Effective Time.

(g) Post-Closing Cash Transfers. After the Effective Time, Parent shall make additional cash payments to MYnd California, not to exceed $2,500,000 in the aggregate, from all cash received by Parent as a result of the exercise of any warrants or stock options of Parent that were in effect prior to the Effective Time, to the extent that the proceeds from such warrant and option exercises exceeds $500,000, and less all such proceeds, if any, theretofore transferred or paid by Parent to MYnd California pursuant to this Agreement after the Effective Time.

Section 2.09 Ancillary Agreements. Effective on or prior to the Effective Time, each of Parent and MYnd California will, or will cause the applicable members of their Groups to, execute and deliver all Ancillary Agreements to which it is a party.

Section 2.10 Disclaimer of Representations and Warranties. EACH OF PARENT (ON BEHALF OF ITSELF AND EACH MEMBER OF THE PARENT GROUP) AND MYND CALIFORNIA (ON BEHALF OF ITSELF AND EACH MEMBER OF THE MYND CALIFORNIA GROUP) UNDERSTANDS AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT, NO PARTY TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR OTHERWISE, IS REPRESENTING OR WARRANTING IN ANY WAY AS TO THE ASSETS, BUSINESSES OR LIABILITIES TRANSFERRED OR ASSUMED AS CONTEMPLATED HEREBY OR THEREBY, AS TO ANY CONSENTS OR APPROVALS REQUIRED IN CONNECTION THEREWITH (INCLUDING WITHOUT LIMITATION GOVERNMENTAL APPROVALS OR PERMITS OF ANY KIND), AS TO THE VALUE OR FREEDOM FROM ANY SECURITY INTERESTS OF, OR ANY OTHER MATTER CONCERNING, ANY ASSETS OF SUCH PARTY, OR AS TO THE ABSENCE OF ANY DEFENSES OR RIGHT OF SETOFF OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY CLAIM OR OTHER ASSET, INCLUDING ANY ACCOUNTS RECEIVABLE, OF ANY PARTY, OR AS TO THE LEGAL SUFFICIENCY OF ANY ASSIGNMENT, DOCUMENT OR INSTRUMENT DELIVERED HEREUNDER TO CONVEY TITLE TO ANY ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING HEREOF OR THEREOF. EXCEPT AS MAY EXPRESSLY BE SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT, ALL SUCH ASSETS ARE BEING TRANSFERRED ON AN "AS IS," "WHERE IS" BASIS AND THE RESPECTIVE TRANSFEREES SHALL BEAR THE ECONOMIC AND LEGAL RISKS THAT (I) ANY CONVEYANCE WILL PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD AND MARKETABLE TITLE, FREE AND CLEAR OF ANY SECURITY INTEREST, AND (II) ANY NECESSARY APPROVALS OR NOTIFICATIONS ARE NOT OBTAINED OR MADE OR THAT ANY REQUIREMENTS OF LAWS OR JUDGMENTS ARE NOT COMPLIED WITH.

Section 2.11 Withholding. Each member of the Parent Group shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payment under the Code or any provision of state, local or non-U.S. Tax Law and shall be entitled to request any reasonably appropriate Tax forms, including an IRS Form W-9 (or the appropriate IRS Form W-8, as applicable), from any recipient of payments hereunder; provided that the Parties shall cooperate and undertake commercially reasonable efforts to minimize or avoid withholding, and the applicable withholding agent shall use best efforts to provide written notice (to the applicable Party) of any intention to withhold (other than any such withholding that is imposed on consideration that is properly treated as compensation for applicable income, employment and/or payroll Tax purposes) at least five (5) business days before the making of such payment. To the extent that amounts are so withheld, such withheld amounts (i) subject to (ii), shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made, and (ii) shall be remitted by the applicable withholding agent to the applicable Governmental Authority.

ARTICLE III.
THE DISTRIBUTION

Section 3.01 Sole and Absolute Discretion; Cooperation.

(a) Parent shall, in its sole and absolute discretion, determine the terms of the Distribution, including the form, structure and terms of any transactions and/or offerings to effect the Distribution and the timing and conditions to the consummation of the Distribution. In addition, Parent may, at any time and from time to time until the consummation of the Distribution, modify or change the terms of the Distribution, including by accelerating or delaying the timing of the consummation of all or part of the Distribution. Nothing shall in any way limit Parent's right to terminate this Agreement or the Distribution as set forth in Article IX or alter the consequences of any such termination from those specified in Article IX.

(b) MYnd California shall cooperate with Parent to accomplish the Distribution and shall, at Parent's direction, promptly take any and all actions necessary or desirable to effect the Distribution, including in respect of the registration under the Exchange Act of MYnd California Shares on the Form 10. Parent shall select any investment bank or manager in connection with the Distribution, as well as any financial printer, solicitation and/or exchange agent and financial, legal, accounting and other advisors for Parent. MYnd California and Parent, as the case may be, will provide to the Agent any information required in order to complete the Distribution.

Section 3.02 Actions Prior to the Distribution. Prior to the Effective Time and subject to the terms and conditions set forth herein, the Parties shall take, or cause to be taken, the following actions in connection with the Distribution:

(a) Notice to Nasdaq. Parent shall, to the extent possible, give Nasdaq not less than ten (10) days' advance notice of the Record Date in compliance with Rule 10b-17 under the Exchange Act.

(b) MYnd California Directors and Officers. On or prior to the Distribution Date, Parent and MYnd California shall take all necessary actions so that as of the Effective Time: (i) the directors and executive officers of MYnd California shall be those set forth in the Form 10, unless otherwise agreed by the Parties; and (ii) MYnd California shall have such other officers as MYnd California shall appoint.

(c) Quotation or Listing of the MYnd California Shares. MYnd California shall prepare and file, and shall use its reasonable best efforts to have approved, an application for (i) listing of the MYnd California Shares to be distributed in the Distribution on NASDAQ, subject to official notice of distribution; or (ii) the quotation of the MYnd California Shares to be distributed in the Distribution on the OTCQB Venture Market of the OTC Markets Group, Inc., subject to official notice of distribution.

(d) Securities Law Matters. MYnd California shall file any amendments or supplements to the Form 10 as may be necessary or advisable in order to cause the Form 10 to become and remain effective as required by the SEC or federal, state or other applicable securities Laws.

(e) Parent Cooperation. Parent and MYnd California shall cooperate in preparing, filing with the SEC and causing to become effective registration statements or amendments thereof which are required to reflect the establishment of, or amendments to, any employee benefit and other plans necessary or advisable in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. Parent and MYnd California will prepare, and MYnd California will, to the extent required under applicable Law, file with the SEC, any such documentation and any requisite no-action letters which Parent determines are necessary or desirable to effectuate the Distribution, and Parent and MYnd California shall each use its reasonable best efforts to obtain all necessary approvals from the SEC with respect thereto as soon as practicable. Parent and MYnd California shall take all such action as may be necessary or appropriate under the securities or blue sky laws of the United States (and any comparable Laws under any foreign jurisdiction) in connection with the Distribution.

(f) The Distribution Agent. Parent shall enter into a distribution agent agreement with the Agent or otherwise provide instructions to the Agent regarding the Distribution.

(g) Stock-Based Employee Benefit Plans. Parent and MYnd California shall take all actions as may be necessary to approve the grants of adjusted equity awards by Parent (in respect of Parent Shares) and MYnd California (in respect of MYnd California Shares) in connection with the Distribution in order to satisfy the requirements of Rule 16b-3 under the Exchange Act.

Section 3.03 Conditions to the Distribution.

(a) The consummation of the Distribution will be subject to the satisfaction, or waiver by Parent in its sole and absolute discretion, of the following conditions:

(i) The SEC shall have declared effective the Form 10; no order suspending the effectiveness of the Form 10 shall be in effect; and no proceedings for such purposes shall have been instituted or threatened by the SEC.

(ii) An independent appraisal firm acceptable to Parent shall have delivered one or more opinions to the Parent Board confirming the solvency and financial viability of Parent prior to the Distribution and of Parent and MYnd California after consummation of the Distribution, and such opinions shall be acceptable to Parent in form and substance in Parent's sole discretion and such opinions shall not have been withdrawn or rescinded;

(iii) The transfer of the MYnd California Assets (other than any Delayed MYnd California Asset) and MYnd California Liabilities (other than any Delayed MYnd California Liability) contemplated to be transferred from Parent to MYnd California on or prior to the Distribution shall have occurred as contemplated by Section 2.01.

(iv) The actions and filings necessary or appropriate under applicable U.S. federal, U.S. state or other securities Laws or blue sky Laws and the rules and regulations thereunder shall have been taken or made, and, where applicable, have become effective or been accepted by the applicable Governmental Authority.

(v) No order, injunction or decree issued by any Governmental Authority of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Separation, the Distribution or any of the transactions related thereto shall be in effect.

(vi) No other events or developments shall exist or shall have occurred that, in the judgment of the Parent Board, in its sole and absolute discretion, makes it inadvisable to effect the Separation, the Distribution or the transactions contemplated by this Agreement or any Ancillary Agreement.

(vii) Parent shall have received from each Record Holder a true, correct and complete IRS Form W-9 or applicable IRS Form W-8, duly executed by such Record Holder on the Distribution Date.

(b) The foregoing conditions are for the sole benefit of Parent and shall not give rise to or create any duty on the part of Parent or the Parent Board to waive or not waive any such condition or in any way limit Parent's right to terminate this Agreement as set forth in Article IX or alter the consequences of any such termination from those specified in Article IX. Any determination made by the Parent Board prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in Section 3.03(a) shall be conclusive and binding on the Parties. If Parent waives any material condition, it shall promptly issue a press release disclosing such fact and file a Current Report on Form 8-K with the SEC describing such waiver.

Section 3.04 The Distribution.

(a) Subject to Section 3.03, on or prior to the Effective Time, MYnd California will deliver to the Agent, for the benefit of the Record Holders, book-entry transfer authorizations for such number of the outstanding MYnd California Shares as is necessary to effect the Distribution, and shall cause the transfer agent for the Parent Shares to instruct the Agent to distribute at the Effective Time the appropriate number of MYnd California Shares to each such holder or designated transferee or transferees of such holder by way of direct registration in book-entry form. MYnd California will not issue paper stock certificates in respect of the MYnd California Shares. The Distribution shall be effective at the Effective Time.

(b) Subject to Sections 3.03, 3.04(c) and 3.04(d), each Record Holder will be entitled to receive in the Distribution one MYnd California Share for each three Parent Shares held by such Record Holder on the Record Date or issuable to such Record Holder upon complete conversion or exercise of the Other Parent Securities, as applicable.

(c) MYnd California shall establish a reserve of MYnd California Shares (the "***Reserve***" and the MYnd California Shares held in the Reserve the "***Reserve Shares***") that shall be retained in treasury by MYnd California for distribution to those holders of Other Parent Securities (i) who are prevented by contractual restrictions, including beneficial ownership limitations, from taking possession of MYnd California Shares in the Distribution or (ii) who hold a warrant issued by the Parent giving the holder a contractual right to receive MYnd California Shares issued in the Distribution if and when such warrant is exercised. As and when the contractual restrictions are no longer applicable or the warrants are exercised, MYnd California shall instruct the Agent to distribute from the Reserve the Reserve Shares to any such holder of Other Parent Securities entitled to then receive the Reserve Shares.

(d) No fractional shares will be distributed or credited to book-entry accounts in connection with the Distribution, and any such fractional share interests to which a Record Holder would otherwise be entitled shall not entitle such Record Holder to vote or to any other rights as a stockholder of MYnd California. In lieu of any such fractional shares, Parent will round up fractional shares that recipients of MYnd California Shares will otherwise be entitled to receive.

(e) Until the MYnd California Shares are duly transferred in accordance with thisSection 3.04 and applicable Law, from and after the Effective Time, MYnd California will regard the Persons entitled to receive such MYnd California Shares as record holders of MYnd California Shares in accordance with the terms of the Distribution without requiring any action on the part of such Persons. MYnd California agrees that, subject to any transfers of such shares, from and after the Effective Time (i) each such holder will be entitled to receive all dividends, if any, payable on, and exercise voting rights and all other rights and privileges with respect to, the MYnd California Shares then held by such holder, and (ii) each such holder will be entitled, without any action on the part of such holder, to receive evidence of ownership of the MYnd California Shares then held by such holder.

ARTICLE IV.
RELEASE; INDEMNIFICATION

Section 4.01 Parent Release of MYnd California. Effective as of the Effective Time, Parent does hereby, for itself and each other member of the Parent Group and their respective successors and assigns, and, to the extent permitted by Law, all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the Parent Group (in each case, in their respective capacities as such), remise, release and forever discharge (i) MYnd California and the members of the MYnd California Group and their respective successors and assigns, and (ii) all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the MYnd California Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from (A) all Parent Liabilities, (B) all Liabilities (other than MYnd California Taxes) arising from or in connection with the transactions and all other activities to implement the Separation and the Distribution (for the avoidance of doubt this clause (B) shall not limit or affect indemnification obligations of the Parties set forth in this Agreement or any Ancillary Agreement) and (C) all Liabilities (other than MYnd California Taxes) arising from or in connection with actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent relating to, arising out of or resulting from the Parent Business, the Parent Group's assets or the Parent Liabilities but excluding any Liabilities resulting from actions by any member of the MYnd California Group that are the result of intentional misconduct, wrongdoing, fraud or misrepresentation by such member of the MYnd California Group.

Section 4.02 Indemnification by MYnd California. Except as otherwise specifically set forth in this Agreement or in any Ancillary Agreement, to the fullest extent permitted by Law, MYnd California shall, and shall cause the other members of the MYnd California Group to, indemnify, defend and hold harmless Parent, each member of the Parent Group and each of their respective past, present and future directors, officers, employees and agents, in each case in their respective capacities as such, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "***Parent Indemnitees***"), from and against any and all Liabilities of the Parent Indemnitees (including for their own contributory negligence) relating to, arising out of or resulting from, directly or indirectly, any of the following items (without duplication); provided, however, that MYnd California shall have no obligation to indemnify any of the Parent Indemnitees with respect to any matter to the extent that such party has engaged in any intentional misconduct, wrongdoing, fraud or misrepresentation:

(a) any MYnd California Liability and Delayed MYnd California Liability;

(b) any failure of MYnd California, any other member of the MYnd California Group or any other Person to pay, perform or otherwise promptly discharge any MYnd California Liabilities in accordance with their terms, whether prior to, on or after the Effective Time;

(c) any breach by MYnd California or any other member of the MYnd California Group of this Agreement or any of the Ancillary Agreements;

(d) except to the extent it relates to a Parent Liability, any guarantee, indemnification or contribution obligation, surety bond or other credit support agreement, arrangement, commitment or understanding for the benefit of any member of the MYnd California Group by any member of the Parent Group that survives following the Distribution; and

(e) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in the Form 10 (as amended or supplemented if MYnd California shall have furnished any amendments or supplements thereto) or any other Disclosure Document.

Section 4.03 Indemnification by Parent. Except as otherwise specifically set forth in this Agreement or in any Ancillary Agreement, to the fullest extent permitted by Law, Parent shall, and shall cause the other members of the Parent Group to, indemnify, defend and hold harmless MYnd California, each member of the MYnd California Group and each of their respective past, present and future directors, officers, employees or agents, in each case in their respective capacities as such, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "***MYnd California Indemnitees***"), from and against any and all Liabilities of the MYnd California Indemnitees (including for their own contributory negligence) relating to, arising out of or resulting from, directly or indirectly, any of the following items (without duplication); provided, however, that Parent shall have no obligation to indemnify any of the MYnd California Indemnitees with respect to any matter to the extent that such party has engaged in any intentional misconduct, wrongdoing, fraud or misrepresentation:

(a) any Parent Liability;

(b) any failure of Parent, any other member of the Parent Group or any other Person to pay, perform or otherwise promptly discharge any Parent Liabilities in accordance with their terms, whether prior to, on or after the Effective Time;

(c) any breach by Parent or any other member of the Parent Group of this Agreement or any of the Ancillary Agreements; and

(d) except to the extent it relates to a MYnd California Liability, any guarantee, indemnification or contribution obligation, surety bond or other credit support agreement, arrangement, commitment or understanding for the benefit of any member of the Parent Group by any member of the MYnd California Group that survives following the Distribution.

Section 4.04 Indemnification Obligations Net of Insurance Proceeds and Other Amounts.

(a) The Parties intend that any Liability subject to indemnification, contribution or reimbursement pursuant to this Article IV or Article V will be net of Insurance Proceeds or other amounts actually recovered (net of any out-of-pocket costs or expenses incurred in the collection thereof) from any Person by or on behalf of the Indemnitee in respect of any indemnifiable Liability. Accordingly, the amount which either Party (an "***Indemnifying Party***") is required to pay to any Person entitled to indemnification or contribution hereunder (an "***Indemnitee***") will be reduced by any Insurance Proceeds or other amounts actually recovered (net of any out-of-pocket costs or expenses incurred in the collection thereof) from any Person by or on behalf of the Indemnitee in respect of the related Liability. If an Indemnitee receives a payment (an "***Indemnity Payment***") required by this Agreement from an Indemnifying Party in respect of any Liability and subsequently receives Insurance Proceeds or any other amounts in respect of such Liability, then within ten (10) calendar days of receipt of such Insurance Proceeds, the Indemnitee will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment received over the amount of the Indemnity Payment that would have been due if the Insurance Proceeds or such other amounts (net of any out-of-pocket costs or expenses incurred in the collection thereof) had been received, realized or recovered before the Indemnity Payment was made.

(b) The Parties agree that an insurer that would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of any provision contained in this Agreement or any Ancillary Agreement, have any subrogation rights with respect thereto, it being understood that no insurer or any other Third Party shall be entitled to a "windfall" (i.e., a benefit they would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification and contribution provisions hereof. Each Party shall, and shall cause the members of its Group to, use commercially reasonable efforts (taking into account the probability of success on the merits and the cost of expending such efforts, including reasonable attorneys' fees and expenses) to collect or recover any Insurance Proceeds that may be collectible or recoverable respecting the Liabilities for which indemnification or contribution may be available under this Article IV. Notwithstanding the foregoing, an Indemnifying Party may not delay making any indemnification payment required under the terms of this Agreement, or otherwise satisfying any indemnification obligation, pending the outcome of any Action to collect or recover Insurance Proceeds, and an Indemnitee need not attempt to collect any Insurance Proceeds prior to making a claim for indemnification or contribution or receiving any Indemnity Payment otherwise owed to it under this Agreement or any Ancillary Agreement.

Section 4.05 Procedures for Indemnification of Third-Party Claims.

(a) Notice of Claims. If, at or following the Effective Time, an Indemnitee shall receive notice or otherwise learn of the assertion by a Person (including any Governmental Authority) who is not a member of the Parent Group or the MYnd California Group of any claim or of the commencement by any such Person of any Action (collectively, a "***Third-Party Claim***") with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnitee pursuant to Section 4.02 or Section 4.03, or any other Section of this Agreement or any Ancillary Agreement, such Indemnitee shall give such Indemnifying Party written notice thereof as soon as practicable, but in any event within fourteen (14) days (or sooner if the nature of the Third-Party Claim so requires) after becoming aware of such Third-Party Claim. Any such notice shall describe the Third-Party Claim in reasonable detail, including the facts and circumstances giving rise to such claim for indemnification, and include copies of all notices and documents (including court papers) received by the Indemnitee relating to the Third-Party Claim. Notwithstanding the foregoing, the failure of an Indemnitee to provide notice in accordance with this Section 4.05(a) shall not relieve an Indemnifying Party of its indemnification obligations under this Agreement, except to the extent to which the Indemnifying Party is actually prejudiced by the Indemnitee's failure to provide notice in accordance with this Section 4.05(a).

(b) Control of Defense. An Indemnifying Party may elect to defend (and seek to settle or compromise), at its own expense and with its own counsel, any Third-Party Claim; provided that, prior to the Indemnifying Party assuming and controlling defense of such Third-Party Claim, it shall first confirm to the Indemnitee in writing that, assuming the facts presented to the Indemnifying Party by the Indemnitee being true, the Indemnifying Party shall indemnify the Indemnitee for any such damages to the extent resulting from, or arising out of, such Third-Party-Claim. Notwithstanding the foregoing, if the Indemnifying Party assumes such defense and, in the course of defending such Third-Party Claim, (i) the Indemnifying Party discovers that the facts presented at the time the Indemnifying Party acknowledged its indemnification obligation in respect of such Third-Party Claim were not true in all material respects and (ii) such untruth provides a reasonable basis for asserting that the Indemnifying Party does not have an indemnification obligation in respect of such Third-Party Claim, then (A) the Indemnifying Party shall not be bound by such acknowledgment, (B) the Indemnifying Party shall promptly thereafter provide the Indemnitee written notice of its assertion that it does not have an indemnification obligation in respect of such Third-Party Claim and (C) the Indemnitee shall have the right to assume the defense of such Third-Party Claim. Within thirty (30) days after the receipt of a notice from an Indemnitee in accordance with Section 4.05(a) (or sooner, if the nature of the Third-Party Claim so requires), the Indemnifying Party shall provide written notice to the Indemnitee indicating whether the Indemnifying Party shall assume responsibility for defending the Third-Party Claim and specifying any reservations or exceptions to its defense. If an Indemnifying Party elects not to assume responsibility for defending any Third-Party Claim or fails to notify an Indemnitee of its election within thirty (30) days after receipt of the notice from an Indemnitee as provided in Section 4.05(a), then the Indemnitee that is the subject of such Third-Party Claim shall be entitled to continue to conduct and control the defense of such Third-Party Claim.

(c) Allocation of Defense Costs. If an Indemnifying Party has elected to assume the defense of a Third-Party Claim, whether with or without any reservations or exceptions with respect to such defense, then such Indemnifying Party shall be solely liable for all fees and expenses incurred by it in connection with the defense of such Third-Party Claim and shall not be entitled to seek any indemnification or reimbursement from the Indemnitee for any such fees or expenses incurred by the Indemnifying Party during the course of the defense of such Third-Party Claim by such Indemnifying Party, regardless of any subsequent decision by the Indemnifying Party to reject or otherwise abandon its assumption of such defense. If an Indemnifying Party elects not to assume responsibility for defending any Third-Party Claim or fails to notify an Indemnitee of its election within thirty (30) days after receipt of a notice from an Indemnitee as provided in Section 4.5(a), and the Indemnitee conducts and controls the defense of such Third-Party Claim and the Indemnifying Party has an indemnification obligation with respect to such Third-Party Claim, then the Indemnifying Party shall be liable for all reasonable fees and expenses incurred by the Indemnitee in connection with the defense of such Third-Party Claim.

(d) Right to Monitor and Participate. An Indemnitee that does not conduct and control the defense of any Third-Party Claim, or an Indemnifying Party that has failed to elect to defend any Third-Party Claim as contemplated hereby, nevertheless shall have the right to employ separate counsel (including local counsel as necessary) of its own choosing to monitor and participate in (but not control) the defense of any Third-Party Claim for which it is a potential Indemnitee or Indemnifying Party, but the fees and expenses of such counsel shall be at the expense of such Indemnitee or Indemnifying Party, as the case may be, and the provisions of Section 4.05(c) shall not apply to such fees and expenses. Notwithstanding the foregoing, but subject to Sections 6.07 and 6.08, such Party shall cooperate with the Party entitled to conduct and control the defense of such Third-Party Claim in such defense and make available to the controlling Party, at the non-controlling Party's expense, all witnesses, information and materials in such Party's possession or under such Party's control relating thereto as are reasonably required by the controlling Party. In addition to the foregoing, if any Indemnitee shall in good faith determine that such Indemnitee and the Indemnifying Party have actual or potential differing defenses or conflicts of interest between them that make joint representation inappropriate, then the Indemnitee shall have the right to employ separate counsel (including local counsel as necessary) and to participate in (but not control) the defense, compromise, or settlement thereof, and in such case the Indemnifying Party shall bear the reasonable fees and expenses of such counsel for all Indemnitees.

(e) No Settlement. Neither Party may settle or compromise any Third-Party Claim for which either Party is seeking to be indemnified hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld, unless such settlement or compromise is solely for monetary damages that are fully payable by the settling or compromising Party, does not involve any admission, finding or determination of wrongdoing or violation of Law by the other Party and provides for a full, unconditional and irrevocable release of the other Party from all Liability in connection with the Third-Party Claim. The Parties hereby agree that if a Party presents the other Party with a written notice containing a proposal to settle or compromise a Third-Party Claim for which either Party is seeking to be indemnified hereunder and the Party receiving such proposal does not respond in any manner to the Party presenting such proposal within thirty (30) days (or within any such shorter time period that may be required by applicable Law or court order) of receipt of such proposal, then the Party receiving such proposal shall be deemed to have consented to the terms of such proposal.

Section 4.06 Additional Matters.

(a) Timing of Payments. Indemnification or contribution payments in respect of any Liabilities for which an Indemnitee is entitled to indemnification or contribution under this Article IV shall be paid reasonably promptly (but in any event within forty-five (45) days of the final determination of the amount that the Indemnitee is entitled to indemnification or contribution under this Article IV) by the Indemnifying Party to the Indemnitee as such Liabilities are incurred upon demand by the Indemnitee, including reasonably satisfactory documentation setting forth the basis for the amount of such indemnification or contribution payment, including documentation with respect to calculations made and consideration of any Insurance Proceeds that actually reduce the amount of such Liabilities. The indemnity and contribution provisions contained in this Article IV shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Indemnitee, and (ii) the knowledge by the Indemnitee of Liabilities for which it might be entitled to indemnification hereunder.

(b) Notice of Direct Claims. Any claim for indemnification or contribution under this Agreement or any Ancillary Agreement that does not result from a Third-Party Claim shall be asserted by written notice given by the Indemnitee to the applicable Indemnifying Party; provided, that the failure by an Indemnitee to so assert any such claim shall not prejudice the ability of the Indemnitee to do so at a later time except to the extent (if any) that the Indemnifying Party is prejudiced thereby. Such Indemnifying Party shall have a period of thirty (30) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such 30-day period, such specified claim shall be conclusively deemed a Liability of the Indemnifying Party under this Section 4.06(b) or, in the case of any written notice in which the amount of the claim (or any portion thereof) is estimated, on such later date when the amount of the claim (or such portion thereof) becomes finally determined. If such Indemnifying Party does not respond within such thirty (30)-day period or rejects such claim in whole or in part, such Indemnitee shall, subject to the provisions of Article VII, be free to pursue such remedies as may be available to such party as contemplated by this Agreement and the Ancillary Agreements, as applicable, without prejudice to its continuing rights to pursue indemnification or contribution hereunder.

(c) Pursuit of Claims Against Third Parties. If (i) a Party incurs any Liability arising out of this Agreement or any Ancillary Agreement; (ii) an adequate legal or equitable remedy is not available for any reason against the other Party to satisfy the Liability incurred by the incurring Party; and (iii) a legal or equitable remedy may be available to the other Party against a Third Party for such Liability, then the other Party shall use its commercially reasonable efforts to cooperate with the incurring Party, at the incurring Party's expense, to permit the incurring Party to obtain the benefits of such legal or equitable remedy against the Third Party.

(d) Subrogation. In the event of payment by or on behalf of any Indemnifying Party to any Indemnitee in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee as to any events or circumstances in respect of which such Indemnitee may have any right, defense or claim relating to such Third-Party Claim against any claimant or plaintiff asserting such Third-Party Claim or against any other Person. Such Indemnitee shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.

Section 4.07 Covenant Not to Sue. Each Party hereby covenants and agrees that none of it, the members of such Party's Group or any Person claiming through it shall bring suit or otherwise assert any claim against any Indemnitee, or assert a defense against any claim asserted by any Indemnitee, before any court, arbitrator, mediator or administrative agency anywhere in the world, alleging that: (a) the assumption of any MYnd California Liabilities by MYnd California or a member of the MYnd California Group on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason; (b) the retention of any Parent Liabilities by Parent or a member of the Parent Group on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason; or (c) the provisions of this Article IV are void or unenforceable for any reason.

Section 4.08 Remedies Cumulative. The remedies provided in this Article IV shall be cumulative and, subject to the provisions of Article VIII, shall not preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

Section 4.09 Survival of Indemnities. The rights and obligations of each of Parent and MYnd California and their respective Indemnitees under this Article IV shall survive (a) the sale or other transfer by either Party or any member of its Group of any assets or businesses or the assignment by it of any liabilities; or (b) any merger, consolidation, business combination, sale of all or substantially all of its Assets, restructuring, recapitalization, reorganization or similar transaction involving either Party or any of the members of its Group.

ARTICLE V.
CERTAIN OTHER MATTERS

Section 5.01 Insurance Matters.

(a) Parent and MYnd California agree to cooperate in good faith to provide for an orderly transition of insurance coverage from the date hereof through the Effective Time. In no event shall Parent, any other member of the Parent Group or any Parent Indemnitee have Liability or obligation whatsoever to any member of the MYnd California Group in the event that any insurance policy or insurance policy related contract shall be terminated or otherwise cease to be in effect for any reason, shall be unavailable or inadequate to cover any Liability of any member of the MYnd California Group for any reason whatsoever or shall not be renewed or extended beyond the current expiration date.

(b) From and after the Effective Time, with respect to any losses, damages and Liability incurred by any member of the MYnd California Group prior to the Effective Time, Parent will pursue claims, at MYnd California's sole cost and expense on behalf of MYnd California (with MYnd California entitled to all Insurance Proceeds resulting from or arising out of any such claims) under Parent's Policies in place immediately prior to the Effective Time (and any extended reporting periods for claims made Policies) and Parent's historical Policies, but solely to the extent that such Policies provided coverage for members of the MYnd California Group or the MYnd California Business prior to the Effective Time; provided that such right to require Parent to make claims on behalf of MYnd California under such Policies shall be subject to the terms, conditions and exclusions of such Policies, including but not limited to any limits on coverage or scope, any deductibles, self-insured retentions and other fees and expenses, and shall be subject to the following additional conditions:

(i) MYnd California shall provide written notification to Parent of any request for Parent to pursue a claim on behalf MYnd California pursuant to this Section 5.01(b), and Parent shall use commercially reasonable efforts to pursue such claim, at MYnd California's sole cost and expense, as promptly as is reasonably practicable;

(ii) MYnd California and the members of the MYnd California Group shall indemnify, hold harmless and reimburse Parent and the members of the Parent Group for any deductibles, self-insured retention, fees, indemnity payments, settlements, judgments, legal fees, allocated claims expenses and claim handling fees, and other expenses incurred by Parent or any members of the Parent Group to the extent resulting from any pursuit of claims on behalf of MYnd California or any other members of the MYnd California Group under any insurance provided pursuant to this Section 5.01(b), whether such claims are pursued on behalf of MYnd California, its employees or third Persons; and

(iii) MYnd California shall exclusively bear (and neither Parent nor any members of the Parent Group shall have any obligation to repay or reimburse MYnd California or any member of the MYnd California Group for) and shall be liable for all excluded, uninsured, uncovered, unavailable or uncollectible amounts of all such claims pursued on behalf of MYnd California or any member of the MYnd California Group under the Policies as provided for in this Section 5.01(b).

In the event that any member of the Parent Group incurs any losses, damages or Liability prior to or in respect of the period prior to the Effective Time for which such member of the Parent Group is entitled to coverage under MYnd California's third-party Policies, the same process pursuant to this Section 5.01(b) shall apply, substituting "Parent" for "MYnd California" and "MYnd California" for "Parent", including for purposes of the first sentence of Section 5.01(e).

(c) Except as provided in Section 5.01(b), from and after the Effective Time, neither MYnd California nor any member of the MYnd California Group shall have any rights to or under any of the Policies of Parent or any other member of the Parent Group. At the Effective Time, MYnd California shall have in effect all insurance programs required to comply with MYnd California's contractual obligations and such other Policies required by Law or as reasonably necessary or appropriate for companies operating a business similar to MYnd California's.

(d) In connection with Parent's pursuit of a claim on behalf of MYnd California or a member of the MYnd California Group under any insurance policy of Parent or any member of the Parent Group pursuant to this Section 5.01, Parent shall not be required to take any action that would be reasonably likely to (i) have a material and adverse impact on the then-current relationship between Parent or any member of the Parent Group, on the one hand, and the applicable insurance company, on the other hand; (ii) result in the applicable insurance company terminating or materially reducing coverage, or materially increasing the amount of any premium owed by Parent or any member of the Parent Group under the applicable insurance policy; or (iii) otherwise compromise, jeopardize or interfere in any material respect with the rights of Parent or any member of the Parent Group under the applicable insurance policy.

(e) All payments and reimbursements by MYnd California pursuant to this Section 5.01 will be made within forty-five (45) days after MYnd California's receipt of an invoice therefor from Parent. Parent shall retain the exclusive right to control its Policies and programs, including the right to exhaust, settle, release, commute, buy-back or otherwise resolve disputes with respect to any of its Policies and programs and to amend, modify or waive any rights under any such Policies and programs, notwithstanding whether any such Policies or programs apply to any MYnd California Liabilities and/or claims MYnd California has made or could make in the future, and no member of the MYnd California Group shall erode, exhaust, settle, release, commute, buyback or otherwise resolve disputes with Parent's insurers with respect to any of Parent's Policies and programs, or amend, modify or waive any rights under any such Policies and programs. MYnd California shall cooperate with Parent and share such information as is reasonably necessary in order to permit Parent to manage and conduct its insurance matters as Parent deems appropriate. Neither Parent nor any member of the Parent Group shall have any obligation to secure extended reporting for any claims under any Policies of Parent or any member of the Parent Group for any acts or omissions by any member of the MYnd California Group incurred prior to the Effective Time. For the avoidance of doubt, each Party and any member of its applicable Group has the sole right to settle or otherwise resolve third party claims made against it or any member of its applicable Group covered under an applicable insurance Policy.

(f) This Agreement shall not be considered as an attempted assignment of any policy of insurance or as a contract of insurance and shall not be construed to waive any right or remedy of any member of the Parent Group in respect of any insurance policy or any other contract or policy of insurance.

(g) MYnd California does hereby, for itself and each other member of the MYnd California Group, agree that no member of the Parent Group shall have any Liability whatsoever as a result of the Policies and practices of Parent and the members of the Parent Group as in effect at any time, including as a result of the level or scope of any such insurance, the creditworthiness of any insurance carrier, the terms and conditions of any policy, or the adequacy or timeliness of any notice to any insurance carrier with respect to any claim or potential claim or otherwise.

Section 5.02 Late Payments. Except as expressly provided to the contrary in this Agreement or in any Ancillary Agreement, any amount not paid when due pursuant to this Agreement or any Ancillary Agreement (and any amounts billed or otherwise invoiced or demanded and properly payable that are not paid within forty-five (45) days of such bill, invoice or other demand) shall accrue interest at a rate per annum equal to 7.5%, provided that notice of any such late payment has been provided and the other Party has been provided fifteen (15) days to cure any such late payment.

Section 5.03 Inducement. MYnd California acknowledges and agrees that Parent's willingness to cause, effect and consummate the Separation and the Distribution has been conditioned upon and induced by MYnd California's covenants and agreements in this Agreement and the Ancillary Agreements, including MYnd California's assumption of the MYnd California Liabilities pursuant to the Separation and the provisions of this Agreement and MYnd California's covenants and agreements contained in Article IV.

Section 5.04 Post-Effective Time Conduct. The Parties acknowledge that, after the Effective Time, each Party shall be independent of the other Party, with responsibility for its own actions and inactions and its own Liabilities relating to, arising out of or resulting from the conduct of its business, operations and activities following the Effective Time, except as may otherwise be provided in any Ancillary Agreement, and each Party shall (except as otherwise provided in Article IV) use commercially reasonable efforts to prevent such Liabilities from being inappropriately borne by the other Party.

ARTICLE VI.
EXCHANGE OF INFORMATION; CONFIDENTIALITY

Section 6.01 Agreement for Exchange of Information.

(a) Subject to Section 6.09 and any other applicable confidentiality obligations, each of Parent and MYnd California, on behalf of itself and each member of its Group, agrees to use commercially reasonable efforts to provide or make available, or cause to be provided or made available, to the other Party and the members of such other Party's Group, at any time before, on or after the Effective Time, as soon as reasonably practicable after written request therefor is received by such Party, any information (or a copy thereof) in the possession or under the control of such Party or its Group which the requesting Party requests to the extent that (i) such information relates to the MYnd California Business, or any MYnd California Asset or MYnd California Liability, if MYnd California is the requesting Party, or to the Parent Business, or any Parent Group asset or Parent Liability, if Parent is the requesting Party; (ii) such information is required by the requesting Party to comply with its obligations under this Agreement or any Ancillary Agreement; or (iii) such information is required by the requesting Party to comply with any obligation imposed by any Governmental Authority; provided, however, that, in the event that the Party to whom the request has been made determines that any such provision of information could be detrimental to the Party providing the information, violate any Law or agreement, or waive any privilege available under applicable Law, including any attorney-client privilege, then the Parties shall use commercially reasonable efforts to permit compliance with such obligations to the extent and in a manner that avoids any such harm or consequence. The Party providing information pursuant to this Section 6.01 shall only be obligated to provide such information in the form, condition and format in which it then exists, and in no event shall such Party be required to perform any improvement, modification, conversion, updating or reformatting of any such information, and nothing in this Section 6.01 shall expand the obligations of a Party under Section 6.04.

(b) Without limiting the generality of the foregoing, until September 30, 2019 (and for a reasonable period of time afterwards as required for each Party to prepare consolidated financial statements or complete a financial statement audit for such fiscal year), each Party shall use its commercially reasonable efforts to cooperate with the other Party's information requests to enable (i) the other Party to meet its timetable for dissemination of its earnings releases, financial statements and management's assessment of the effectiveness of its disclosure controls and procedures and its internal control over financial reporting in accordance with Items 307 and 308, respectively, of Regulation S-K promulgated under the Exchange Act; and (ii) the other Party's accountants to timely complete their review of the quarterly financial statements and audit of the annual financial statements, including, to the extent applicable to such Party, its auditor's audit of its internal control over financial reporting and management's assessment thereof in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, the SEC's and Public Company Accounting Oversight Board's rules and auditing standards thereunder and any other applicable Laws.

Section 6.02 Ownership of Information. The provision of any information pursuant to Section 6.01 or Section 6.07 shall not affect the ownership of such information (which shall be determined solely in accordance with the terms of this Agreement and the Ancillary Agreements), or constitute a grant of rights in or to any such information.

Section 6.03 Compensation for Providing Information. The Party requesting information agrees to reimburse the other Party for the reasonable costs, if any, of creating, gathering, copying, transporting and otherwise complying with the request with respect to such information (including any reasonable costs and expenses incurred in any review of information for purposes of protecting the Privileged Information of the providing Party or in connection with the restoration of backup media for purposes of providing the requested information). Except as may be otherwise specifically provided elsewhere in this Agreement, any Ancillary Agreement or any other agreement between the Parties, such costs shall be computed in accordance with the providing Party's standard methodology and procedures.

Section 6.04 Record Retention**.** To facilitate the possible exchange of information pursuant to this Article VI and other provisions of this Agreement after the Effective Time, the Parties agree to use their commercially reasonable efforts, which shall be no less rigorous than those used for retention of such Party's own information, to retain all information in their respective possession or control at the Effective Time in accordance with their respective policies regarding retention of records; provided, however, that in the case of any information relating to Taxes, such retention period shall be extended to the expiration of the applicable statute of limitations (giving effect to any extensions thereof).

Section 6.05 Limitations of Liability**.** Neither Party shall have any Liability to the other Party in the event that any information exchanged or provided pursuant to this Agreement is found to be inaccurate in the absence of gross negligence, bad faith or willful misconduct by the Party providing such information. Neither Party shall have any Liability to any other Party if any information is destroyed after commercially reasonable efforts by such Party to comply with the provisions of Section 6.04.

Section 6.06 Other Agreements Providing for Exchange of Information.

(a) The rights and obligations granted under this Article VI are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange, retention, destruction or confidential treatment of information set forth in any Ancillary Agreement.

(b) Any party that receives, pursuant to a request for information in accordance with this Article VI, Tangible Information that is not relevant to its request shall, at the request of the providing Party, (i) return it to the providing Party or, at the providing Party's request, destroy such Tangible Information; and (ii) deliver to the providing Party written confirmation that such Tangible Information was returned or destroyed, as the case may be, which confirmation shall be signed by an authorized representative of the requesting Party.

Section 6.07 Production of Witnesses; Records; Cooperation.

(a) After the Effective Time, except in the case of a Dispute between Parent and MYnd California, or any members of their respective Groups, each Party shall use its commercially reasonable efforts to make available to the other Party, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available without undue burden, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any Action in which the requesting Party (or member of its Group) may from time to time be involved, regardless of whether such Action is a matter with respect to which indemnification may be sought hereunder. The requesting Party shall bear all costs and expenses in connection therewith.

(b) If an Indemnifying Party chooses to defend or to seek to compromise or settle any Third-Party Claim, the other Party shall make available to such Indemnifying Party, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available without undue burden, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with such defense, settlement or compromise, or such prosecution, evaluation or pursuit, as the case may be, and shall otherwise cooperate in such defense, settlement or compromise, or such prosecution, evaluation or pursuit, as the case may be.

(c) Without limiting the foregoing, the Parties shall cooperate and consult to the extent reasonably necessary with respect to any Actions.

(d) Without limiting any provision of this Section 6.07, each of the Parties agrees to cooperate, and to cause each member of its respective Group to cooperate, with each other in the defense of any infringement or similar claim with respect to any Intellectual Property and shall not claim to acknowledge, or permit any member of its respective Group to claim to acknowledge, the validity or infringing use of any Intellectual Property of a third Person in a manner that would hamper or undermine the defense of such infringement or similar claim.

(e) The obligation of the Parties to provide witnesses pursuant to this Section 6.07 is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to provide as witnesses directors, officers, employees, other personnel and agents without regard to whether such person could assert a possible business conflict (subject to the exception set forth in the first sentence of Section 6.07(a)).

Section 6.08 Privileged Matters.

(a) The Parties recognize that legal and other professional services that have been and will be provided prior to the Effective Time have been and will be rendered for the collective benefit of each of the members of the Parent Group and the MYnd California Group, and that each of the members of the Parent Group and the MYnd California Group should be deemed to be the client with respect to such services for the purposes of asserting all privileges which may be asserted under applicable Law in connection therewith. The Parties recognize that legal and other professional services will be provided following the Effective Time, which services will be rendered solely for the benefit of the Parent Group or the MYnd California Group, as the case may be. In furtherance of the foregoing, each Party shall authorize the delivery to and/or retention by the other Party of materials existing as of the Effective Time that are necessary for such other Party to perform such services.

(b) The Parties agree as follows:

(i) Parent shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the Parent Business and not to the MYnd California Business, whether or not the Privileged Information is in the possession or under the control of any member of the Parent Group or any member of the MYnd California Group. Parent shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to any Parent Liabilities resulting from any Actions that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under the control of any member of the Parent Group or any member of the MYnd California Group;

(ii) MYnd California shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the MYnd California Business and not to the Parent Business, whether or not the Privileged Information is in the possession or under the control of any member of the MYnd California Group or any member of the Parent Group. MYnd California shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to any MYnd California Liabilities resulting from any Actions that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under the control of any member of the MYnd California Group or any member of the Parent Group; and

(iii) if the Parties do not agree as to whether certain information is Privileged Information, then such information shall be treated as Privileged Information, and the Party that believes that such information is Privileged Information shall be entitled to control the assertion or waiver of all privileges and immunities in connection with any such information unless the Parties otherwise agree. The Parties shall use the procedures set forth in Article VII to resolve any disputes as to whether any information relates solely to the Parent Business, solely to the MYnd California Business, or to both the Parent Business and the MYnd California Business.

(c) Subject to the remaining provisions of this Section 6.08, the Parties agree that they shall have a shared privilege or immunity with respect to all privileges and immunities not allocated pursuant to Section 6.08(b) and all privileges and immunities relating to any Actions or other matters that involve both Parties (or one or more members of their respective Groups) and in respect of which both Parties have Liabilities under this Agreement, and that no such shared privilege or immunity may be waived by either Party without the consent of the other Party.

(d) If any Dispute arises between the Parties or any members of their respective Groups regarding whether a privilege or immunity should be waived to protect or advance the interests of either Party and/or any member of their respective Groups, each Party agrees that it shall (i) negotiate with the other Party in good faith; (ii) endeavor to minimize any prejudice to the rights of the other Party; and (iii) not unreasonably withhold consent to any request for waiver by the other Party. Further, each Party specifically agrees that it shall not withhold its consent to the waiver of a privilege or immunity for any purpose except in good faith to protect its own legitimate interests.

(e) In the event of any Dispute between Parent and MYnd California, or any members of their respective Groups, either Party may waive a privilege in which the other Party or member of such other Party's Group has a shared privilege, without obtaining consent pursuant to Section 6.08(c); provided that the Parties intend such waiver of a shared privilege to be effective only as to the use of information with respect to the Action between the Parties and/or the applicable members of their respective Groups, and is not intended to operate as a waiver of the shared privilege with respect to any Third Party.

(f) Upon receipt by either Party, or by any member of its respective Group, of any subpoena, discovery or other request that may reasonably be expected to result in the production or disclosure of Privileged Information subject to a shared privilege or immunity or as to which another Party has the sole right hereunder to assert a privilege or immunity, or if either Party obtains knowledge that any of its, or any member of its respective Group's, current or former directors, officers, agents or employees have received any subpoena, discovery or other requests that may reasonably be expected to result in the production or disclosure of such Privileged Information, such Party shall promptly notify the other Party of the existence of the request (which notice shall be delivered to such other Party no later than five (5) business days following the receipt of any such subpoena, discovery or other request) and shall provide the other Party a reasonable opportunity to review the Privileged Information and to assert any rights it or they may have under this Section 6.08 or otherwise, to prevent the production or disclosure of such Privileged Information.

(g) Any furnishing of, or access or transfer of, any information pursuant to this Agreement is made in reliance on the agreement of Parent and MYnd California set forth in this Section 6.08 and in Section 6.09 to maintain the confidentiality of Privileged Information and to assert and maintain all applicable privileges and immunities. The Parties agree that their respective rights to any access to information, witnesses and other Persons, the furnishing of notices and documents and other cooperative efforts between the Parties contemplated by this Agreement, and the transfer of Privileged Information between the Parties and members of their respective Groups as needed pursuant to this Agreement, is not intended to be deemed a waiver of any privilege that has been or may be asserted under this Agreement or otherwise.

(h) In connection with any matter contemplated by Section 6.07 or this Section 6.08, the Parties agree to, and to cause the applicable members of their Group to, use commercially reasonable efforts to maintain their respective separate and joint privileges and immunities, including by executing joint defense and/or common interest agreements where necessary or useful for this purpose.

Section 6.09 Confidentiality.

(a) Confidentiality. Subject to Section 6.10, from and after the Effective Time each of Parent and MYnd California, on behalf of itself and each member of its respective Group, agrees to hold, and to cause its respective Representatives to hold, in strict confidence, with at least the same degree of care that applies to Parent's confidential and proprietary information pursuant to policies in effect as of the Effective Time, all confidential and proprietary information concerning the other Party or any member of the other Party's Group or their respective businesses (giving effect to the Separation and Distribution) that is either in its possession (including confidential and proprietary information in its possession prior to the date hereof) or furnished by any such other Party or any member of such Party's Group or their respective Representatives at any time pursuant to this Agreement, any Ancillary Agreement or otherwise, and shall not use any such confidential and proprietary information other than for such purposes as shall be expressly permitted hereunder or thereunder, except, in each case, to the extent that such confidential and proprietary information has been (i) in the public domain or generally available to the public, other than as a result of a disclosure by such Party or any member of such Party's Group or any of their respective Representatives in violation of this Agreement, (ii) later lawfully acquired from other sources by such Party (or any member of such Party's Group) which sources are not themselves bound by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such confidential and proprietary information, or (iii) independently developed or generated without reference to or use of any proprietary or confidential information of the other Party or any member of such Party's Group. If any confidential and proprietary information of one Party or any member of its Group is disclosed to the other Party or any member of such other Party's Group in connection with providing services to such first Party or any member of such first Party's Group under this Agreement or any Ancillary Agreement, then such disclosed confidential and proprietary information shall be used only as required to perform such services.

(b) No Release; Return or Destruction. Each Party agrees not to release or disclose, or permit to be released or disclosed, any information addressed in Section 6.09(a) to any other Person, except its Representatives who need to know such information in their capacities as such (who shall be advised of their obligations hereunder with respect to such information), and except in compliance with Section 6.10. Without limiting the foregoing, when any such information is no longer needed for the purposes contemplated by this Agreement or any Ancillary Agreement, and is no longer subject to any legal hold or other document preservation obligation, each Party will promptly after request of the other Party either return to the other Party all such information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or notify the other Party in writing that it has destroyed such information (and such copies thereof and such notes, extracts or summaries based thereon); provided, that the Parties may retain electronic back-up versions of such information maintained on routine computer system backup tapes, disks or other backup storage devices; provided further, that any such information so retained shall remain subject to the confidentiality provisions of this Agreement or any Ancillary Agreement.

(c) Third-Party Information; Privacy or Data Protection Laws. Each Party acknowledges that it and members of its Group may presently have and, following the Effective Time, may gain access to or possession of confidential or proprietary information of, or legally-protected personal information relating to, Third Parties (i) that was received under privacy policies and/or confidentiality or non-disclosure agreements entered into between such Third Parties, on the one hand, and the other Party or members of such other Party's Group, on the other hand, prior to the Effective Time; or (ii) that, as between the two Parties, was originally collected by the other Party or members of such other Party's Group and that may be subject to and protected by privacy policies, as well as privacy, data protection or other applicable Laws. Each Party agrees that it shall hold, protect and use, and shall cause the members of its Group and its and their respective Representatives to hold, protect and use, in strict confidence the confidential and proprietary information of, or legally-protected personal information relating to, Third Parties in accordance with privacy policies and privacy, data protection or other applicable Laws and the terms of any agreements that were either entered into before the Effective Time or affirmative commitments or representations that were made before the Effective Time by, between or among the other Party or members of the other Party's Group, on the one hand, and such Third Parties, on the other hand. With respect to legally-protected personal information received from consumers before the Effective Time, each Party agrees that it will not use data in a manner that is materially inconsistent with promises made at the time the data was collected unless it first obtains affirmative express consent from the relevant consumer.

(d) Protective Arrangements. In the event that a Party or any member of its Group either determines on the advice of its counsel that it is required to disclose any information pursuant to applicable Law or receives any request or demand under lawful process or from any Governmental Authority to disclose or provide information of the other Party (or any member of the other Party's Group) that is subject to the confidentiality provisions hereof, such Party shall notify the other Party (to the extent legally permitted) as promptly as practicable under the circumstances prior to disclosing or providing such information and shall cooperate, at the expense of the other Party, in seeking any appropriate protective order requested by the other Party. In the event that such other Party fails to receive such appropriate protective order in a timely manner, then the Party that received such request or demand may thereafter disclose or provide information to the extent required by such Law (as so advised by its counsel) or by lawful process or such Governmental Authority, and the disclosing Party shall promptly provide the other Party with a copy of the information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such information was disclosed, in each case to the extent legally permitted.

ARTICLE VII.
EMPLOYEE PROVISIONS

Section 7.01 Assignment and Transfer of Employees. Effective as of no later than the Effective Time and except as otherwise agreed by the Parties, the Parties shall have taken such actions as are necessary to ensure that each individual who is intended to be an employee of the MYnd California Group as of immediately after the Effective Time (including any such individual who is not actively working as of the Effective Time as a result of an illness, injury or leave of absence approved by the Parent human resources department or otherwise taken in accordance with applicable Law) (collectively, the "***MYnd California Employees***") is employed by a member of the MYnd California Group as of immediately after the Effective Time. Each of the Parties agrees to execute, and to seek to have the applicable MYnd California Employees execute, such documentation, if any, as may be necessary to reflect such assignment and/or transfer.

Section 7.02 At-Will Status. Nothing in this Agreement shall create any obligation on the part of any member of the MYnd California Group to (a) continue the employment of any MYnd California Employee or permit the return from a leave of absence for any period after the date of this Agreement (except as required by applicable Law) or (b) change the employment status of any MYnd California Employee from "at-will," to the extent that such MYnd California Employee is an "at-will" employee under applicable Law.

Section 7.03 Severance. The Parties acknowledge and agree that, except as required by applicable Law, the Separation, Distribution and the assignment, transfer or continuation of the employment of MYnd California Employees as contemplated by this Article VII shall not be deemed an involuntary termination of employment entitling any MYnd California Employee to severance payments or benefits.

Section 7.04 Director Compensation. Subject to the terms of the Merger Agreement, Parent shall be responsible for the payment of any fees for service on the Parent Board that are earned at, before, or after the Effective Time, and MYnd California shall not have any responsibility for any such payments.

Section 7.05 Adoption and Transfer and Assumption of Benefit Plans.

(a) Adoption by Parent of Benefit Plans. As of no later than the Effective Time or as soon thereafter as is practicable, MYnd California shall adopt Benefit Plans (and related trusts, if applicable) as contemplated by, and in accordance with, the terms of this Agreement.

(b) Information and Operation. Parent shall use its commercially reasonable efforts to provide MYnd California with information describing each Benefit Plan election made by a MYnd California Employee that may have application to such Party's Benefit Plans from and after the Effective Time, and each Party shall use its commercially reasonable efforts to administer its Benefit Plans using those elections. Each Party shall, upon reasonable request, use its commercially reasonable efforts to provide the other Party and the other Party's respective Affiliates, agents, and vendors all information reasonably necessary to the other Party's operation or administration of its Benefit Plans.

Section 7.06 Individual Agreements. To the extent necessary, Parent shall assign, or cause an applicable member of the Parent Group to assign, to MYnd California or another member of the MYnd California Group, as designated by MYnd California, all Individual Agreements with MYnd California Employees, with such assignment to be effective as of no later than the Effective Time; provided, however, that to the extent that assignment of any such Individual Agreement is not permitted by the terms of such agreement or by applicable Law, effective as of the Effective Time, each member of the MYnd California Group shall be considered to be a successor to each member of the Parent Group for purposes of, and a third-party beneficiary with respect to, such Individual Agreement, such that each member of the MYnd California Group shall enjoy all of the rights and benefits under such agreement (including rights and benefits as a third-party beneficiary), with respect to the business operations of the MYnd California Group.

Section 7.07 Information Sharing and Access.

(a) Sharing of Information. Subject to any limitations imposed by applicable Law, each of Parent and MYnd California (acting directly or through members of the Parent Group or the MYnd California Group, respectively) shall provide to the other Party and its authorized agents and vendors all information necessary (including information for purposes of determining benefit eligibility, participation, vesting, calculation of benefits) on a timely basis under the circumstances for the Party to perform its duties under this Agreement. Such information shall include information relating to equity awards under stock plans. To the extent that such information is maintained by a third-party vendor, each Party shall use its commercially reasonable efforts to require the third-party vendor to provide the necessary information and assist in resolving discrepancies or obtaining missing data.

(b) Transfer of Personnel Records and Authorization. Subject to any limitation imposed by applicable Law and to the extent that it has not done so before the Effective Time, Parent shall transfer to MYnd California any and all employment records (including any Form I-9, Form W-2 or other IRS forms) with respect to MYnd California Employees and other records reasonably required by MYnd California to enable MYnd California properly to carry out its obligations under this Agreement. Such transfer of records generally shall occur as soon as administratively practicable at or after the Effective Time. Each Party shall permit the other Party reasonable access to its MYnd California Employee records, to the extent reasonably necessary for such accessing Party to carry out its obligations hereunder.

ARTICLE VIII.
TAXES

Section 8.01 Parent Consolidated Returns. Parent shall prepare and file or cause to be prepared and filed all Parent Consolidated Returns for a Pre-Closing Period or a Straddle Period, and shall pay all Taxes shown to be due and payable on such Tax Returns. MYnd California shall elect and join, and will cause its respective Subsidiaries and Affiliates to join, in filing any Parent Consolidated Returns that MYnd California is joining consistent with Past Practice or that Parent and MYnd California determine in good faith are required to be filed or for which MYnd California and Parent mutually elect to do so. MYnd California shall pay to Parent any MYnd California Taxes shown as due and payable on any Parent Consolidated Return prepared and filed pursuant to this Section 8.01. For the avoidance of doubt any Taxes for a Straddle Period shall be allocated to the Pre-Closing Period and the Post-Closing Period as set forth in Section 8.06.

Section 8.02 Mixed Business Tax Returns.

(a) Subject to Section 8.02(b), Parent shall prepare (or cause a member of the Parent Group to prepare) and Parent, a member of the Parent Group or MYnd California or another member of the MYnd California Group shall timely file (or cause to be timely filed) any Mixed Business Tax Returns for a Pre-Closing Period (including a Straddle Period) and Parent shall pay, or cause such member of the Parent Group to pay, all Taxes shown to be due and payable on such Tax Returns; provided that MYnd California shall reimburse Parent for any MYnd California Taxes (including any Taxes for a Straddle Period as determined under Section 8.06).

(b) MYnd California shall prepare and file (or cause a member of the MYnd California Group to prepare and file) any Mixed Business Tax Returns for a Pre-Closing Period (including a Straddle Period) required to be filed by MYnd California or a member of the MYnd California Group after the Distribution Date, and MYnd California shall pay, or cause such member of the MYnd California Group to pay, all Taxes shown to be due and payable on such Tax Returns; provided that Parent shall reimburse MYnd California for any Parent Taxes (including any Taxes for a Straddle Period as determined under Section 8.06).

Section 8.03 Single Business Returns.

(a) Parent shall prepare and file (or cause a member of the Parent Group to prepare and file) any Single Business Returns for a Pre-Closing Period (including a Straddle Period) required to be filed by Parent or a member of the Parent Group and shall pay, or cause such member of the Parent Group to pay, all Taxes shown to be due and payable on such Tax Returns; provided that MYnd California shall reimburse Parent for any MYnd California Taxes (including any Taxes for a Straddle Period as determined under Section 8.06).

(b) MYnd California shall prepare and file (or cause a member of the MYnd California Group to prepare and file) any Single Business Returns for a Pre-Closing Period (including a Straddle Period) required to be filed by MYnd California or a member of the MYnd California Group and shall pay, or cause such member of the MYnd California Group to pay, all Taxes shown to be due and payable on such Tax Returns; provided that Parent shall reimburse MYnd California for any Parent Taxes (including any Taxes for a Straddle Period as determined under Section 8.06).

Section 8.04 Procedures relating to Tax Returns other than Single Business Returns

(a) Parent Consolidated Returns. With respect to all Parent Consolidated Returns for the taxable year which includes the Distribution Date, Parent shall use the closing of the books method under Treasury Regulation Section 1.1502-76 (including adopting the "end of the day rule" described therein). To the extent that the positions taken on any Parent Consolidated Return would reasonably be expected to materially adversely affect the Tax position of MYnd California or a member of the MYnd California Group for any period after the Distribution Date, Parent shall prepare the portions of such Tax Return in a manner that is consistent with Past Practice unless otherwise required by applicable Law or agreed to in writing by the Parties, and shall provide a draft of such portion of such Tax Return to MYnd California for its review and comment at least thirty (30) days prior to the Due Date for such Tax Return, provided, however, that nothing herein shall prevent Parent from timely filing any such Tax Return. In the event that Past Practice is not applicable to a particular item or matter, Parent shall determine the reporting of such item or matter in good faith. The Parties shall negotiate in good faith to resolve all disputed issues. Any disputes that the Parties are unable to resolve shall be resolved by the Accounting Firm pursuant to Section 8.16. In the event that any dispute is not resolved (whether pursuant to good faith negotiations among the Parties or by the Accounting Firm) prior to the Due Date for the filing of any such Tax Return, such Tax Return shall be timely filed by Parent and Parent agrees to amend such Tax Return as necessary to reflect the resolution of such dispute in a manner consistent with such resolution.

(b) Mixed Business Tax Returns. To the extent that the positions taken on any Mixed Business Tax Return would reasonably be expected to materially adversely affect the Tax position of the party other than the party that is required to prepare and file any such Tax Return pursuant to Section 8.02 (the "***Reviewing Party***") in any Post-Closing Period, the party required to prepare and file such Tax Return (the "***Preparing Party***") shall prepare the portions of such Tax Return that relates to the business of the Reviewing Party in a manner that is consistent with Past Practice unless otherwise required by applicable Law or agreed to in writing by the Parties, and shall provide a draft of such portion of such Tax Return to the Reviewing Party for its review and comment at least thirty (30) days prior to the Due Date for such Tax Return, provided, however, that nothing herein shall prevent the Preparing Party from timely filing any such Tax Return. In the event that Past Practice is not applicable to a particular item or matter, the Preparing Party shall determine the reporting of such item or matter in good faith. The Parties shall negotiate in good faith to resolve all disputed issues. Any disputes that the Parties are unable to resolve shall be resolved by the Accounting Firm pursuant to Section 8.16. In the event that any dispute is not resolved (whether pursuant to good faith negotiations among the Parties or by the Accounting Firm) prior to the Due Date for the filing of any such Tax Return, such Tax Return shall be timely filed by the Preparing Party and the Parties agree to amend such Tax Return as necessary to reflect the resolution of such dispute in a manner consistent with such resolution.

Section 8.05 Amended Returns. Except as provided in Section 8.04 to reflect the resolution of any dispute by the Accounting Firm pursuant to Section 8.16, (a) except with the prior written consent of Parent (such consent not to be unreasonably withheld, delayed or conditioned), MYnd California shall not, and shall not permit any member of the MYnd California Group to, amend any Tax Return of MYnd California or any member of the MYnd California Group for any Pre-Closing Period (including any Straddle Period) to the extent such amendment could reasonably be expected to result in an indemnification obligation on the part of Parent pursuant to Section 8.10 or otherwise increase the Taxes of any member of the Parent Group and (b) except with the prior written consent of MYnd California (such consent not to be unreasonably withheld, delayed or conditioned), Parent shall not, and shall not permit any member of the Parent Group to, amend any Tax Return for any Pre-Closing Period (including any Straddle Period) to the extent such amendment could reasonably be expected to result in an indemnification obligation on the part of MYnd California pursuant to Section 8.10 or otherwise increase the Taxes of any member of the MYnd California Group.

Section 8.06 Straddle Period Tax Allocation. Parent and MYnd California shall take all actions necessary or appropriate to close the taxable year of MYnd California and each member of the MYnd California Group for all Tax purposes as of the close of the Distribution Date to the extent permissible or required under applicable Law. If applicable Law does not require or permit MYnd California or a member of the MYnd California Group, as the case may be, to close its taxable year on the Distribution Date, then the allocation of income or deductions required to determine any Taxes or other amounts attributable to the portion of the Straddle Period ending on, or beginning after, the Distribution Date shall be made by means of a closing of the books and records of MYnd California or such member of the MYnd California Group as of the close of the Distribution Date; provided that exemptions, allowances or deductions that are calculated on an annual or periodic basis shall be allocated between such portions in proportion to the number of days in each such portion; provided, further, that real property and other property and similar periodic Taxes shall be apportioned on a per diem basis.

Section 8.07 Timing of Payments. All Taxes required to be paid or caused to be paid pursuant to this Article VIII by either Parent or a member of the Parent Group or MYnd California or a member of the MYnd California Group, as the case may be, to an applicable Taxing Authority or reimbursed by Parent or MYnd California to the other Party pursuant to this Agreement, shall, in the case of a payment to a Taxing Authority, be paid on or before the Due Date for the payment of such Taxes and, in the case of a reimbursement to the other Party, be paid at least five (5) business days before the Due Date for the payment of such Taxes by the other Party; provided that the Party seeking reimbursement shall furnish such other Party reasonably satisfactory documentation setting forth the basis for, and calculation of, the amount of such reimbursement obligation at least twenty (20) days before such Due Date.

Section 8.08 Expenses. Except as expressly provided in Section 8.09(b) and Section 8.16, each Party shall bear its own expenses incurred in connection with this Article VIII.

Section 8.09 Distribution Tax Reporting.

(a) The Parties shall cause the Distribution to be reported to holders of Parent Shares in accordance with applicable Law. The Parties shall not take any position on any U.S. federal or state income tax return or take any other U.S. tax reporting position that is inconsistent with the treatment of the Distribution as a distribution to which Section 301 of the Code applies, except as otherwise required by applicable Law or a "determination" as defined in Code Section 1313.

(b) Section 336(e) Election. Pursuant to Treasury Regulation Section 1.336-2(h)(1), if requested by MYnd California in its sole discretion, Parent shall make a timely election under Section 336(e) of the Code and the Treasury Regulations issued thereunder for MYnd California respect to the Distribution (a "***Section 336(e) Election***"). If so elected by MYnd California, Parent shall cooperate with MYnd California in making the Section 336(e) Election, including filing any statements, amending any Tax Returns or taking such other action reasonably necessary to carry out the Section 336(e) Election; provided that Parent shall not be required to take any action requested by MYnd California in furtherance of this Section 8.09(b) that Parent reasonably and in good faith determines to be materially adverse to Parent or any other member of the Parent Group. For the avoidance of doubt, this Agreement is intended to constitute a written, binding agreement by Parent and MYnd California to make such Section 336(e) Election within the meaning of Treasury Regulation Section 1.336-2(h)(1)(i) if MYnd California determines that such election shall be made. In such event, within sixty (60) days after the Distribution Date, MYnd California shall provide Parent with a proposed determination of the "aggregate deemed asset disposition price" and the "adjusted grossed-up basis" (each as defined under applicable Treasury Regulations) and the allocation of such "aggregate deemed asset disposition price" and "adjusted grossed-up basis" among the MYnd California Assets, each in accordance with the applicable provisions of Section 336(e) of the Code and applicable Treasury Regulations (the "***Section 336(e) Allocation Statement***"). Within thirty (30) days after Parent's receipt of the Section 336(e) Allocation Statement, Parent shall provide comments (if any) to MYnd California to the Section 336(e) Allocation Statement and MYnd California shall consider such comments in good faith; provided, however, that MYnd California may not reject any such Parent comment if such rejection would materially adversely affect Parent without Parent's consent, which consent may not be unreasonably withheld, delayed or conditioned (taking into account the rights and obligations under this Agreement); provided, however, that if MYnd California may not reject any such comment pursuant to this sentence then the Parties shall work together in good faith and any remaining disagreement with respect to such comment shall be resolved pursuant to Section 8.04. If MYnd California determines that the Section 336(e) Election shall be made, no member of the Parent Group or the MYnd California Group shall take any position inconsistent with the Section 336(e) Election including the Section 336(e) Allocation Statement (as finally resolved pursuant to this Section 8.09(b)) except as may be required by a "determination" as defined in Section 1313 of the Code. For the avoidance of doubt, MYnd California shall bear all costs, expenses and Liabilities of Parent arising solely as a result of this Section 8.09(b), including out of pocket costs and expenses arising in connection with amending any Parent Tax Returns.

Section 8.10 Tax Indemnification.

(a) Indemnification by Parent. Parent shall pay, and shall indemnify and hold the MYnd California Group harmless from and against, without duplication, (a) all Parent Taxes, (b) all Taxes incurred by MYnd California or any member of the MYnd California Group that would not have been imposed but for the breach by Parent of any of its covenants hereunder, and (c) any out-of-pocket costs and expenses related to the foregoing (including reasonable attorneys' fees and expenses).

(b) Indemnification by MYnd California. MYnd California shall pay, and shall indemnify and hold the Parent Group harmless from and against, without duplication, (a) all MYnd California Taxes, (b) all Taxes incurred by Parent or any member of the Parent Group that would not have been imposed but for the breach by MYnd California of any of its covenants hereunder, and (c) any out-of-pocket costs and expenses related to the foregoing (including reasonable attorneys' fees and expenses).

(c) Characterization of and Adjustments to Payments. For all Tax purposes, unless otherwise required under applicable Law or pursuant to a "determination" as defined in Code Section 1313, Parent and MYnd California shall treat any payment by Parent to a member of the MYnd California Group or by MYnd California to a member of the Parent Group required by this Agreement (other than payments with respect to interest accruing after the Distribution Date) as either a contribution by Parent to MYnd California or a distribution by MYnd California to Parent, as the case may be, occurring immediately prior to the Distribution.

(d) Timing of Indemnification Payments. Indemnification payments in respect of any liabilities for which a Tax Indemnified Party is entitled to indemnification pursuant to this Article VIII shall be paid by the Indemnifying Party to the Tax Indemnified Party within ten (10) days after written notification thereof by the Tax Indemnified Party (or such shorter period specified in this Article VIII), including reasonably satisfactory documentation setting forth the basis for, and calculation of, the amount of such indemnification payment, or within ten (10) days after resolution of any Tax Proceeding pursuant to Section 8.13.

(e) To the extent that the provisions of this Section 8.10 conflict with the provisions of Section 4.02 or Section 4.03, the provision set forth in this Section 8.10 shall control.

Section 8.11 Refunds.

(a) Refunds and Credits.

(i) Parent shall be entitled to all Refunds received by any member of the MYnd California Group or any of their Affiliates of Taxes paid by any member of the Parent Group to a Taxing Authority or to MYnd California pursuant to this Agreement or otherwise borne by Parent pursuant to a claim for indemnity under this Agreement, and MYnd California shall be entitled to all Refunds received by any member of the Parent Group or any of their Affiliates of Taxes paid by any member of the MYnd California Group to a Taxing Authority or to Parent pursuant to this Agreement or otherwise borne by MYnd California pursuant to a claim for indemnity under this Agreement; provided, however, that all Refunds of Taxes shall be offset and reduced by any amounts owed by the Party otherwise entitled to the Refund under this Section 8.11(a)(i) to the other Party under this Agreement. For the avoidance of doubt, to the extent that a particular Refund of Taxes is allocable to a Straddle Period with respect to which the Parties have shared responsibility pursuant to Section 8.06, the portion of such Refund to which each Party will be entitled shall be determined by comparing the amount of payments made by a Party (or any of member of such Party's Group) to a Taxing Authority or to the other Party (and reduced by the amount of payments received from the other Party) pursuant to this Article VIII with the Tax liability of such Party as determined under Section 8.06, taking into account the facts as utilized for purposes of claiming such Refund. If a Party (or any member of its Tax Group) receives a Refund to which the other Party is entitled pursuant to this Agreement, such Party shall pay the net amount to which such other Party is entitled (including, for avoidance of doubt, net of any Taxes imposed with respect to such refund and any other reasonable out-of-pocket costs incurred by such Party) within ten (10) days after the receipt of the Refund. Notwithstanding the foregoing, neither Party shall be entitled to any payment or other benefit from the other Party pursuant to this Section 8.11(a)(i) related to any Refund that is attributable to the carrying back to a Pre-Closing Period of a net operating loss or tax credit that arose in a Post-Closing Period.

(ii) For the avoidance of doubt, to the extent that a Party (or any member of its Tax Group) applies or causes to be applied an overpayment of Taxes as a credit toward or a reduction in Taxes otherwise payable (or a Taxing Authority requires such application in lieu of a Refund) and such overpayment of Taxes, if received as a cash refund, would have been payable by such Party to the other Party pursuant to this Section 8.11, such Party shall pay such amount to the other Party no later than ten (10) days following the Due Date of the Tax Return on which the overpayment is reflected.

(iii) If there is a subsequent reduction by a Taxing Authority (or by virtue of a change in applicable Tax Law) of any amounts with respect to which a payment has been made pursuant to Section 8.11(a)(i), then the applicable Party that received the benefit of the Refund from the other Party shall pay to such other Party an amount equal to such reduction plus any interest or penalties imposed by a Taxing Authority with respect to such reduction.

Section 8.12 Net Operating Losses. The Parties agree to allocate the net operating losses of MYnd California existing on the Distribution Date to first reduce any Parent Transaction Taxes. Any net operating losses of MYnd California remaining after such use shall follow the MYnd California Group after the Distribution Date to the fullest extent permitted under applicable Law, and, except in accordance with the foregoing provisions of this Section 8.12, Parent shall not utilize the net operating losses of MYnd California after the Distribution Date unless otherwise required under applicable Law. Parent and MYnd California hereby agree to compute all Taxes for Post-Closing Periods consistently with the allocation of MYnd California net operating losses pursuant to this Section 8.12. Parent and MYnd California hereby agree not to make any election with respect to the net operating losses allocated pursuant to this Section 8.12 to MYnd California without the prior written approval of MYnd California, which approval shall be provided by MYnd California in its sole and absolute discretion. Notwithstanding anything to the contrary herein, to the extent that the net operating losses of MYnd California are not sufficient to eliminate entirely the Parent Transaction Taxes, to maximum extent allowed by Law, any net operating losses of Parent (or any Affiliate of Parent) shall be used to reduce the Parent Transaction taxes to zero.

Section 8.13 Tax Proceedings. To the extent the provisions of this Section 8.13 conflict with the provisions of Section 4.05, the provisions of this Section 8.13 shall control.

(a) Notification of Tax Proceedings. Within ten (10) days after a Tax Indemnified Party becomes aware of the commencement of a Tax Proceeding with respect to a Pre-Closing Period (including a Straddle Period), such Tax Indemnified Party shall notify the Indemnifying Party of such Tax Proceeding, and thereafter shall promptly forward or make available to the Indemnifying Party copies of material notices and material communications relating to such Tax Proceeding. The failure of the Tax Indemnified Party to notify the Indemnifying Party of the commencement of any such Tax Proceeding within such 10 day period or promptly forward any further material notices or material communications shall not relieve the Indemnifying Party of any obligation which it may have to the Tax Indemnified Party under this Agreement except to the extent to which the Indemnifying Party is actually prejudiced by the Tax Indemnified Party's failure to provide notice in accordance with this Section 8.13(a).

(b) Tax Proceeding Procedures Generally.

(i) Tax Proceedings relating to Parent Consolidated Returns. Parent shall be entitled to contest, compromise, control and settle any adjustment or deficiency proposed, asserted or assessed pursuant to any Tax Proceeding with respect to any Parent Consolidated Return; provided that to the extent such Tax Proceeding could reasonably be expected to adversely affect the amount of Taxes for which MYnd California is responsible pursuant to Section 8.10, Parent shall (A) defend such Tax Proceeding diligently and in good faith and (B) shall keep MYnd California informed in a timely manner of all actions proposed to be taken by Parent with respect to such Tax Proceeding (or to the extent practicable the portion of such Tax Proceeding that relates to Taxes for which MYnd California is responsible pursuant to Section 8.10), (C) shall permit MYnd California to participate (at MYnd California's sole expense) in all proceedings with respect to such Tax Proceeding (or to the extent practicable the portion of such Tax Proceeding that relates to Taxes for which MYnd California is responsible pursuant to Section 8.10), and (D) shall not settle any such Tax Proceeding without the prior written consent of MYnd California, which shall not be unreasonably withheld, conditioned or delayed.

(ii) Tax Proceedings relating to Other Returns. The Preparing Party (in the case of a Mixed Business Tax Return) or the Single Business Return Preparing Party (in the case of a Single Business Return) shall be entitled to contest, compromise, control and settle any adjustment or deficiency proposed, asserted or assessed pursuant to any Tax Proceeding with respect to any Mixed Business Tax Return or Single Business Return; provided that to the extent such Tax Proceeding could reasonably be expected to adversely affect the amount of Taxes for which non-controlling Party is responsible pursuant to Section 8.10, the controlling Party shall (A) defend such Tax Proceeding diligently and in good faith, (B) shall keep the non-controlling party informed in a timely manner of all actions proposed to be taken by the controlling party with respect to such Tax Proceeding (or to the extent practicable the portion of such Tax Proceeding that relates to Taxes for which the non-controlling party is responsible pursuant to Section 8.10), (C) shall permit the non-controlling Party to participate (at the non-controlling Party's sole expense) in all material proceedings with respect to such Tax Proceeding (or to the extent practicable the portion of such Tax Proceeding that relates to Taxes for which the non-controlling Party is responsible pursuant to Section 8.10), and (D) shall not settle any such Tax Proceeding without the prior written consent of the non-controlling Party, which shall not be unreasonably withheld, conditioned or delayed.

Section 8.14 Tax Cooperation.

(a) General Cooperation. The Parties shall each cooperate fully (and each shall cause its respective Subsidiaries to cooperate fully) with all reasonable requests in writing from another Party hereto, or from an agent, representative or advisor to such Party, in connection with the preparation and filing of Tax Returns, claims for Refunds, Tax Proceedings, and calculations of amounts required to be paid pursuant to this Agreement, in each case, related or attributable to or arising in connection with Taxes of either of the Parties or their respective Subsidiaries covered by this Agreement and in connection with any financial reporting matter relating to Taxes (a " ***Tax Matter***"). Such cooperation shall include the provision of any information reasonably necessary in connection with a Tax Matter (***Information***") and shall include, without limitation:

(i) the provision of any Tax Returns, other than any Parent Consolidated Return, of the Parties and their respective Subsidiaries and other documentation and information which is reasonably relevant to any such Tax Return, claim for Refund, Tax Proceeding or calculation;

(ii) the execution of any document (including any power of attorney) reasonably necessary in connection with any Tax Proceedings of either of the Parties or their respective Subsidiaries for Pre-Closing Periods (including Straddle Periods); and

(iii) the making of each Party's employees, advisors, and facilities available on a reasonable and mutually convenient basis in connection with the foregoing matters.

(b) Notwithstanding anything in this Agreement to the contrary, neither Party shall be required to provide the other Party or any of such other Party's Subsidiaries access to or copies of information, documents or personnel if such action could reasonably be expected to result in the waiver of any Privilege. In the event that either Party determines that the provision of any information or documents to the other Party or any of such other Party's Subsidiaries could be commercially detrimental, violate any law or agreement or waive any Privilege, the Parties shall use commercially reasonable efforts to permit compliance with its obligations hereunder in a manner that avoids any such harm or consequence.

(c) The Parties shall perform all actions required or permitted under this Agreement in good faith. If one Party requests the cooperation of the other Party pursuant to this Section 8.14, the requesting Party shall reimburse such other Party for all reasonable out-of-pocket costs and expenses incurred by such other Party in complying with the requesting Party's request.

Section 8.15 Retention of Records. Parent and MYnd California shall retain or cause to be retained all Tax Returns, material schedules and material work papers, and all material records or other material documents relating thereto in their possession, in each case that relate to a Pre-Closing Period, until the expiration of all applicable statutes of limitations (the "***Retention Period***"). Upon the expiration of the Retention Period, the foregoing information may be destroyed or disposed of by the Party retaining such documentation or other information unless the other Party otherwise requests in writing before the expiration of the Retention Period. In such case, the Party retaining such documentation or other information shall deliver such materials to the other Party at the expense of such other Party.

Section 8.16 Tax Dispute Resolution. In the event of any dispute between the Parties as to any matter covered by thisArticle VIII, the Parties shall appoint a nationally recognized public accounting firm reasonably acceptable to both of the Parties (the "***Accounting Firm***") to resolve such dispute. In this regard, the Accounting Firm shall make determinations with respect to the disputed items based solely on representations made by Parent and MYnd California and their respective representatives, and not by independent review, and shall function only as an expert and not as an arbitrator and shall be required to make a determination within the ranges submitted by the Parties. The Parties shall require the Accounting Firm to resolve all disputes no later than thirty (30) days after the submission of such dispute to the Accounting Firm, and agree that all decisions by the Accounting Firm with respect thereto shall be final and conclusive and binding on the Parties. The Accounting Firm shall resolve all disputes in a manner consistent with this Agreement and, to the extent not inconsistent with this Agreement, in a manner consistent with the Past Practices of Parent and its Subsidiaries, except as otherwise required by applicable Law. The Parties shall require the Accounting Firm to render all determinations in writing and to set forth, in reasonable detail, the basis for such determination. The total costs and expenses of the Accounting Firm will be allocated and borne between Parent and MYnd California based upon that percentage of such fees and expenses equal to the percentage of the dollar value of the proposed determinations submitted to the Accounting Firm determined in favor of the other Party; provided, that if in light of the nature of the dispute the foregoing is not feasible, such costs and expenses shall be borne equally by the Parties. Any initial retainer required by the Accounting Firm shall be funded equally by the Parties (and, following the Accounting Firm's determination, the Parties shall make appropriate payments between themselves as are necessary to give effect to the preceding sentence). To the extent the provisions of this Section 8.16 conflict with the provisions of Article IX, the provisions of this Section 8.16 shall control. Notwithstanding anything to the contrary contained herein, in the case of Parent Consolidated Returns, the Accounting Firm shall resolve any dispute in favor of MYnd California if MYnd California's position is supported by a "more likely than not" standard under the Code or if no position is supported by a "more likely than not" standard, if MYnd California's position has "substantial authority" within the meaning of Treasury Regulation Section 1.6662-4(d)(2).

Section 8.17 Transfer Taxes. All Transfer Taxes, if any, shall be borne by MYnd California and shall be paid by MYnd California when due. MYnd California will prepare and timely file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes (the expense of which shall be borne by MYnd California) and, if required by applicable Law, Parent will join in the execution of any such Tax Returns and other documentation.

ARTICLE IX.
DISPUTE RESOLUTION

Section 9.01 Good Faith Offer Negotiation. Subject to Section 9.04, either Party seeking resolution of any dispute, controversy or claim arising out of or relating to this Agreement or any Ancillary Agreement (including regarding whether any Assets are MYnd California Assets, any Liabilities are MYnd California Liabilities or the validity, interpretation, breach or termination of this Agreement or any Ancillary Agreement) (a " ***Dispute***"), shall provide written notice thereof to the other Party (the "***Offer Negotiation Request***"). Within fifteen (15) days of the delivery of the Offer Negotiation Request, the Parties shall attempt to resolve the Dispute through good faith negotiation. All such negotiations shall be conducted by executives who hold, at a minimum, the title of Senior Vice President and who have authority to settle the Dispute. All such negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties are unable for any reason to resolve a Dispute within thirty (30) days of receipt of the Offer Negotiation Request, and such thirty (30) day period is not extended by mutual written consent of the Parties, the Chief Executive Officers of the Parties shall enter into good faith negotiations in accordance with Section 9.02.

Section 9.02 Good-Faith Negotiation. If any Dispute is not resolved pursuant to Section 9.01, the Party that delivered the Offer Negotiation Request shall provide written notice of such Dispute to the Chief Executive Officer of each Party (a "***CEO Negotiation Request***"). As soon as reasonably practicable following receipt of a CEO Negotiation Request, the Chief Executive Officers of the Parties shall begin conducting good-faith negotiations with respect to such Dispute. All such negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Chief Executive Officers of the Parties are unable for any reason to resolve a Dispute within thirty (30) days of receipt of a CEO Negotiation Request, and such 30 day period is not extended by mutual written consent of the Parties, the Dispute shall be submitted to arbitration in accordance with Section 9.03.

Section 9.03 Arbitration.

(a) In the event that a Dispute has not been resolved within thirty (30) days of the receipt of a CEO Negotiation Request in accordance with Section 9.02, or within such longer period as the Parties may agree to in writing, then such Dispute shall, upon the written request of a Party (the "***Arbitration Request***") be submitted to be finally resolved by binding arbitration in accordance with the then current International Institute for Conflict Prevention and Resolution ("***CPR***") arbitration procedure, except as modified herein. The arbitration shall be held in (i) Orange County, California, or (ii) such other place as the Parties may mutually agree in writing. Unless otherwise agreed by the Parties in writing, any Dispute to be decided pursuant to this Section 9.03 will be decided before a sole arbitrator. The sole independent arbitrator will be appointed by agreement of the Parties within fifteen (15) days of the date of receipt of the Arbitration Request. If the Parties cannot agree to a sole independent arbitrator during such fifteen (15) day period, then upon written application by either party, the sole independent arbitrator will be appointed pursuant to the CPR arbitration procedure.

(b) The arbitrator will have the right to award, on an interim basis, or include in the final award, any relief which it deems proper in the circumstances, including money damages (with interest on unpaid amounts from the due date), injunctive relief (including specific performance) and reasonable attorneys' fees and costs; provided that the arbitrators will not award any relief not specifically requested by the Parties and, in any event, will not award any indirect, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages of the other arising in connection with the transactions contemplated hereby (other than any such Liability with respect to a Third-Party Claim). The award of the arbitrator shall be final and binding on the Parties, and may be enforced in any court of competent jurisdiction. The initiation of arbitration pursuant to this Article IX will toll the applicable statute of limitations for the duration of any such proceedings.

ARTICLE X.
FURTHER ASSURANCES AND ADDITIONAL COVENANTS

Section 10.01 Further Assurances.

(a) In addition to the actions specifically provided for elsewhere in this Agreement, each of the Parties shall use its reasonable best efforts, prior to, on and after the Effective Time, to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable Laws, regulations and agreements to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements.

(b) Without limiting the foregoing, prior to, on and after the Effective Time, each Party hereto shall cooperate with the other Party, and without any further consideration, but at the expense of the requesting Party, to execute and deliver, or use its reasonable best efforts to cause to be executed and delivered, all instruments, including instruments of conveyance, assignment and transfer, and to make all filings with, and to obtain all Approvals or Notifications of, any Governmental Authority or any other Person under any permit, license, agreement, indenture or other instrument (including any consents or Governmental Approvals), and to take all such other actions as such Party may reasonably be requested to take by the other Party from time to time, consistent with the terms of this Agreement and the Ancillary Agreements, in order to effectuate the provisions and purposes of this Agreement and the Ancillary Agreements and the transfers of the MYnd California Assets and the Parent Group's assets and the assignment and assumption of the MYnd California Liabilities and the Parent Liabilities and the other transactions contemplated hereby and thereby. Without limiting the foregoing, each Party will, at the reasonable request, cost and expense of the other Party, take such other actions as may be reasonably necessary to vest in such other Party good and marketable title to the Assets allocated to such Party under this Agreement or any of the Ancillary Agreements, free and clear of any Security Interest, if and to the extent it is practicable to do so.

(c) On or prior to the Effective Time, Parent and MYnd California, in their respective capacities as direct and indirect stockholders of the members of their Groups, shall each ratify any actions which are reasonably necessary or desirable to be taken by Parent, MYnd California or any of the members of their respective Groups, as the case may be, to effectuate the transactions contemplated by this Agreement and the Ancillary Agreements.

(d) Parent and MYnd California, and each of the members of their respective Groups, waive (and agree not to assert against any of the others) any claim or demand that any of them may have against any of the others for any Liabilities or other claims relating to or arising out of: (i) the failure of MYnd California or any other member of the MYnd California Group, on the one hand, or of Parent or any other member of the Parent Group, on the other hand, to provide any notification or disclosure required under any state Environmental Law in connection with the Separation or the other transactions contemplated by this Agreement, including the transfer by any member of any Group to any member of the other Group of ownership or operational control of any Assets not previously owned or operated by such transferee; or (ii) any inadequate, incorrect or incomplete notification or disclosure under any such state Environmental Law by the applicable transferor. To the extent any Liability to any Governmental Authority or any third Person arises out of any action or inaction described in clause (i) or (ii) above, the transferee of the applicable Asset hereby assumes and agrees to pay any such Liability.

ARTICLE XI.
TERMINATION

Section 11.01 Termination. This Agreement and all Ancillary Agreements may be terminated and the Distribution may be amended, modified or abandoned at any time prior to the Effective Time by Parent, in its sole and absolute discretion, without the approval or consent of any other Person, including MYnd California. After the Effective Time, this Agreement may not be terminated except by an agreement in writing signed by a duly authorized officer of each of the Parties.

Section 11.02 Effect of Termination. In the event of any termination of this Agreement prior to the Effective Time, no Party (nor any of its directors, officers or employees) shall have any Liability or further obligation to the other Party by reason of this Agreement.

ARTICLE XII.
MISCELLANEOUS

Section 12.01 Counterparts; Entire Agreement; Corporate Power.

(a) This Agreement and each Ancillary Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

(b) This Agreement, the Ancillary Agreements and the Exhibits, Schedules and appendices hereto and thereto contain the entire agreement between the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties other than those set forth or referred to herein or therein. This Agreement and the Ancillary Agreements together govern the arrangements in connection with the Separation and Distribution and would not have been entered independently.

(c) Parent represents on behalf of itself and each other member of the Parent Group, and MYnd California represents on behalf of itself and each other member of the MYnd California Group, as follows:

(i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby; and

(ii) this Agreement and each Ancillary Agreement to which it is a party has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms thereof.

(iii) No broker, finder or other Person is entitled to any fee or commission in connection with the transactions contemplated in this Agreement based upon any arrangement made by or on behalf of Parent or MYnd California.

(d) Each Party acknowledges that it and each other Party is executing certain of the Ancillary Agreements by facsimile, stamp or mechanical signature, and that delivery of an executed counterpart of a signature page to this Agreement or any Ancillary Agreement (whether executed by manual, stamp or mechanical signature) by facsimile or by email in portable document format (PDF) shall be effective as delivery of such executed counterpart of this Agreement or any Ancillary Agreement. Each Party expressly adopts and confirms each such facsimile, stamp or mechanical signature (regardless of whether delivered in person, by mail, by courier, by facsimile or by email in portable document format (PDF)) made in its respective name as if it were a manual signature delivered in person, agrees that it will not assert that any such signature or delivery is not adequate to bind such Party to the same extent as if it were signed manually and delivered in person and agrees that, at the reasonable request of the other Party at any time, it will as promptly as reasonably practicable cause each such Ancillary Agreement to be manually executed (any such execution to be as of the date of the initial date thereof) and delivered in person, by mail or by courier.

Section 12.02 Governing Law. This Agreement and, unless expressly provided therein, each Ancillary Agreement (and any claims or disputes arising out of or related hereto or thereto or to the transactions contemplated hereby and thereby or to the inducement of any party to enter herein and therein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed by and construed and interpreted in accordance with the Laws of the State of Delaware irrespective of the choice of laws principles of the State of Delaware including all matters of validity, construction, effect, enforceability, performance and remedies.

Section 12.03 Assignability. Except as set forth in any Ancillary Agreement, this Agreement and each Ancillary Agreement shall be binding upon and inure to the benefit of the Parties and the parties thereto, respectively, and their respective successors and permitted assigns; provided, however, that neither Party nor any such party thereto may assign its rights or delegate its obligations under this Agreement or any Ancillary Agreement without the express prior written consent of the other Party hereto or other parties thereto, as applicable. Notwithstanding the foregoing, no such consent shall be required for the assignment of a party's rights and obligations under this Agreement and the Ancillary Agreements (except as may be otherwise provided in any such Ancillary Agreement) in whole (*i.e.*, the assignment of a party's rights and obligations under this Agreement and all Ancillary Agreements all at the same time) in connection with a change of control of a Party so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party.

Section 12.04 Third-Party Beneficiaries. Except for the indemnification rights under this Agreement and each Ancillary Agreement of any Parent Indemnitee or MYnd California Indemnitee in their respective capacities as such, (a) the provisions of this Agreement and each Ancillary Agreement are solely for the benefit of the Parties and are not intended to confer upon any Person except the Parties any rights or remedies hereunder, and (b) there are no third-party beneficiaries of this Agreement or any Ancillary Agreement and neither this Agreement nor any Ancillary Agreement shall provide any third person with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement or any Ancillary Agreement.

Section 12.05 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 when delivered by hand, by registered mail, by courier or express delivery service or by facsimile 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 prior to the Effective Time to:

MYnd Analytics, Inc.
26522 La Alameda, Suite 290
Mission Viejo, CA 92691
Attention: Patrick Herguth
Email: pherguth@myndanalytics.com

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Email: jeffrey.baumel@dentons.com
ilan.katz@dentons.com
Attention: Jeffrey A. Baumel, Esq.
Ilan Katz, Esq.

if to Parent after the Effective Time to:

Emmaus Life Sciences, Inc.
21250 Hawthorne Boulevard
Suite 800, Torrance, CA 90503
Attention: Chief Executive Officer
Email: yniihara@emmauslifesciences.com

with a copy to:

Emmaus Life Sciences, Inc.
21250 Hawthorne Boulevard
Suite 800, Torrance, CA 90503
Attention: General Counsel
Email: dshort@emmauslifesciences.com

if to MYnd California:

MYnd Analytics, Inc.
26522 La Alameda, Suite 290
Mission Viejo, CA 92691
Attention: Patrick Herguth
Email: pherguth@myndanalytics.com

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Email: jeffrey.baumel@dentons.com
ilan.katz@dentons.com
Attention: Jeffrey A. Baumel, Esq.
Ilan Katz, Esq.

Section 12.06 Severability. If any provision of this Agreement or any Ancillary Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.

Section 12.07 No Set-Off. Except as expressly set forth in this Agreement or any Ancillary Agreement or as otherwise mutually agreed to in writing by the Parties, neither Party nor any member of such Party's Group shall have any right of set-off or other similar rights with respect to (a) any amounts received pursuant to this Agreement or any Ancillary Agreement; or (b) any other amounts claimed to be owed to the other Party or any member of its Group arising out of this Agreement or any Ancillary Agreement.

Section 12.08 Expenses. Except as otherwise expressly set forth in this Agreement or any Ancillary Agreement, or as otherwise agreed to in writing by the Parties, all fees, costs and expenses incurred on or prior to the Effective Time in connection with the preparation, execution, delivery and implementation of this Agreement, including the Separation and the Distribution, and any Ancillary Agreement, the Form 10 and the consummation of the transactions contemplated hereby and thereby will be borne by the Party or its applicable Subsidiary incurring such fees, costs or expenses.

Section 12.09 Headings. The article, section and paragraph headings contained in this Agreement and in the Ancillary Agreements are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any Ancillary Agreement.

Section 12.10 Survival of Covenants. Except as expressly set forth in this Agreement or any Ancillary Agreement, the covenants, representations and warranties contained in this Agreement and each Ancillary Agreement, and Liability for the breach of any obligations contained herein, shall survive the Separation and the Distribution and shall remain in full force and effect.

Section 12.11 Waivers of Default. Waiver by a Party of any default by the other Party of any provision of this Agreement or any Ancillary Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of the other Party. No failure or delay by a Party in exercising any right, power or privilege under this Agreement or any Ancillary Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 12.12 Specific Performance. Subject to the provisions of Article XI, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement or any Ancillary Agreement, the Party or Parties who are, or are to be, thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief in respect of its or their rights under this Agreement or such Ancillary Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any Action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by each of the Parties.

Section 12.13 Amendments. No provisions of this Agreement or any Ancillary Agreement shall be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the Party against whom it is sought to enforce such waiver, amendment, supplement or modification.

Section 12.14 Interpretation. In this Agreement and any Ancillary Agreement, (a) words in the singular shall be deemed to include the plural and vice versa and words of one gender shall be deemed to include the other genders as the context requires; (b) the terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement (or the applicable Ancillary Agreement) as a whole (including all of the Schedules, Exhibits and Appendices hereto and thereto) and not to any particular provision of this Agreement (or such Ancillary Agreement); (c) Article, Section, Schedule, Exhibit and Appendix references are to the Articles, Sections, Schedules, Exhibits and Appendices to this Agreement (or the applicable Ancillary Agreement) unless otherwise specified; (d) unless otherwise stated, all references to any agreement (including this Agreement and each Ancillary Agreement) shall be deemed to include the exhibits, schedules and annexes (including all Schedules, Exhibits and Appendixes) to such agreement; (e) the word "including" and words of similar import when used in this Agreement (or the applicable Ancillary Agreement) shall mean "including, without limitation," unless otherwise specified; (f) the word "or" shall not be exclusive; (g) unless otherwise specified in a particular case, the word "days" refers to calendar days; (h) references to "business day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by law to close in the United States or New York, New York; (i) references herein to this Agreement or any other agreement contemplated herein shall be deemed to refer to this Agreement or such other agreement as of the date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified; and (j) unless expressly stated to the contrary in this Agreement or in any Ancillary Agreement, all references to "the date hereof," "the date of this Agreement," "hereby" and "hereupon" and words of similar import shall all be references to the date set forth in the introductory paragraph of this Agreement.

Section 12.15 Limitations of Liability. Notwithstanding anything in this Agreement to the contrary, neither MYnd California or any member of the MYnd California Group, on the one hand, nor Parent or any member of the Parent Group, on the other hand, shall be liable under this Agreement to the other for any indirect, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages of the other arising in connection with the transactions contemplated hereby.

Section 12.16 Performance. Parent will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any Ancillary Agreement to be performed by any member of the Parent Group. MYnd California will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any Ancillary Agreement to be performed by any member of the MYnd California Group. Each Party (including its permitted successors and assigns) further agrees that it will (a) give timely notice of the terms, conditions and continuing obligations contained in this Agreement and any applicable Ancillary Agreement to all of the other members of its Group and (b) cause all of the other members of its Group not to take any action or fail to take any such action inconsistent with such Party's obligations under this Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby.

Section 12.17 Mutual Drafting. This Agreement and the Ancillary Agreements shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

PARENT:

MYND ANALYTICS, INC.

By: /s/ Patrick Herguth
Name: Patrick Herguth
Title: Chief Executive Officer

MYND CALIFORNIA:

MYND ANALYTICS, INC.

By: /s/ Patrick Herguth
Name: Patrick Herguth
Title: Chief Executive Officer

Exhibit 10.2

FORM OF EMMAUS VOTING AGREEMENT

This VOTING AGREEMENT (this "***Agreement***"), dated as of January 4, 2019, is by and between MYND ANALYTICS, INC., a Delaware corporation ("***Parent***"), and each of the undersigned stockholders (each, a "***Stockholder***," and, collectively, the "***Stockholders***") of EMMAUS LIFE SCIENCES, INC., a Delaware corporation (the "***Company***"), identified on the signature page hereto.

A. The Company, Parent, and ATHENA MERGER SUBSIDIARY INC., a Delaware corporation and a direct wholly owned subsidiary of Parent ("***Merger Sub***"), have entered into that certain Agreement and Plan of Merger and Reorganization (as amended from time to time, the "***Merger Agreement***"), dated as of January 4, 2019, pursuant to which Merger Sub will merge with and into the Company (the "***Merger***") and the Company will continue as a direct wholly owned subsidiary of Parent; and

B. As of the date hereof, each Stockholder is the Beneficial Owner (as defined below) of, and has the sole right to vote and dispose of, that number of each class of the issued and outstanding capital stock of the Company (the "***Company Shares***") set forth opposite such Stockholder's name on Schedule A hereto.

C. Concurrently with the entry by the Company, Parent and Merger Sub into the Merger Agreement, and as a condition and inducement to the willingness of the Company to enter into the Merger Agreement and incur the obligations set forth therein, Parent has required that the Stockholders enter into this Agreement.

Accordingly, and in consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1.
DEFINITIONS

Capitalized terms used but not defined in this Agreement are used in this Agreement with the meanings given to such terms in the Merger Agreement. In addition, for purposes of this Agreement:

"***Affiliate***" means, with respect to any specified Person, a Person who, at the time of determination, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person. For purposes of this Agreement, with respect to a Stockholder, " ***Affiliate***" does not include the Company and the Persons that directly, or indirectly through one or more intermediaries, are controlled by the Company. For the avoidance of doubt, no officer or director of the Company will be deemed an Affiliate of another officer or director of the Company by virtue of his or her status as an officer or director of the Company.

"***Beneficial Owner***" with respect to any securities means a Person that has Beneficial Ownership of such securities.

"***Beneficially Owned***" or "***Beneficial Ownership***" with respect to any securities means having beneficial ownership of such securities (as determined pursuant to Rule 13d-3 under the Exchange Act, disregarding the phrase "within 60 days" in paragraph (d)(1)(i) thereof), including pursuant to any agreement, arrangement or understanding, whether or not in writing. Without duplicative counting of the same securities, securities Beneficially Owned by a Person include securities Beneficially Owned by (i) all Affiliates of such Person, and (ii) all other Persons with whom such Person would constitute a "group" within the meaning of Section 13(d) of the Exchange Act and the rules promulgated thereunder.

"***Subject Shares***" means, with respect to a Stockholder, without duplication, (i) the Company Shares Beneficially Owned by such Stockholder on the date hereof as described on Schedule A, (ii) any additional Company Shares Beneficially Owned or acquired by such Stockholder, including those over which such Stockholder acquires Beneficial Ownership from and after the date hereof, whether pursuant to existing stock option agreements, warrants or otherwise, and (iii) any securities converted, exchanged or reclassified into Company Shares. Without limiting the other provisions of this Agreement, in the event that the Company changes the number of Company Shares issued and outstanding prior to the Termination Date as a result of a reclassification, stock split (including a reverse stock split), stock dividend or distribution, combination, recapitalization, subdivision, or other similar transaction, the number of Subject Shares subject to this Agreement will be equitably adjusted to reflect such change.

"***Transfer***" means, with respect to a security, the sale, transfer, pledge, hypothecation, encumbrance, assignment or disposition of such security or the Beneficial Ownership thereof, whether by operation of Law or otherwise, and each option, agreement, arrangement or understanding, whether or not in writing, to effect any of the foregoing. As a verb, "***Transfer***" has a correlative meaning.

ARTICLE 2.
COVENANTS OF STOCKHOLDERS

2 . 1 **Irrevocable Proxy**. Concurrently with the execution of this Agreement, each Stockholder agrees to deliver to Parent a proxy in the form attached hereto as Exhibit A (the "***Proxy***"), which will be irrevocable to the extent provided therein, with respect to the Subject Shares referred to therein.

2.2 **Agreement to Vote**.

(a) At each and every meeting of the stockholders of the Company held prior to the Termination Date, however called, and at every adjournment or postponement thereof prior to the Termination Date, or in connection with each and every written consent of, or any other action by, the stockholders of the Company given or solicited prior to the Termination Date, each Stockholder will vote or provide a consent with respect to, or shall cause the holder of record on any applicable record date to vote or provide a consent with respect to, all of the Subject Shares entitled to vote or to consent thereon (i) in favor of the adoption of the Merger Agreement and (ii) against any amendment of the Company's certificate of incorporation or bylaws or any other proposal or transaction involving the Company, the effect of which amendment or other proposal or transaction is to delay, impair, prevent or nullify the Merger or the transactions contemplated by the Merger Agreement or change in any manner the voting rights of any capital stock of the Company, and against any other action or agreement that would result in a breach in any material respect of any covenant, representation or warranty or any other obligation or agreement of the Company or its stockholders under the Merger Agreement. Notwithstanding any other provision of this Agreement, each Stockholder's obligations under this Section 2.2(a) shall not extend to any modification or amendment to the Merger Agreement unless such stockholder otherwise agrees in a subsequent writing.

(b) No Stockholder will enter into any agreement with any Person (other than Parent) prior to the Termination Date (with respect to periods prior to or after the Termination Date) directly or indirectly to vote, consent, grant any proxy or give instructions with respect to the voting of, the Subject Shares in respect of the matters described in Section 2.2(a) hereof, or the effect of which would be inconsistent with or violate any provision contained in this Section 2.2. Any vote or consent (or withholding of consent) by any Stockholder that is not in accordance with this Section 2.2 will be considered null and void.

2.3 **Revocation of Proxies; Cooperation**. Each Stockholder agrees as follows:

(a) Such Stockholder hereby represents and warrants that any proxies heretofore given in respect of the Subject Shares with respect to the matters described in Section 2.2(a) hereof are not irrevocable, and such Stockholder hereby revokes any and all prior proxies with respect to such Subject Shares as they relate to such matters. Prior to the Termination Date, such Stockholder will not directly or indirectly grant any proxies or powers of attorney with respect to the matters set forth in Section 2.2(a) hereof (other than to Parent), deposit any of the Subject Shares or enter into a voting agreement (other than this Agreement) with respect to any of the Subject Shares relating to any matter described in Section 2.2(a).

(b) Such Stockholder will provide any information reasonably requested by the Company or Parent for any regulatory application or filing sought for such transactions.

2.4 **No Transfer of Subject Shares; Publicity**. Each Stockholder agrees that:

(a) It (i) will not Transfer or agree to Transfer any of the Subject Shares or, with respect to any matter described in Section 2.2(a), grant any proxy or power-of-attorney with respect to any of the Subject Shares, (ii) will take all action reasonably necessary to prevent creditors in respect of any pledge of the Subject Shares from exercising their rights under such pledge, and (iii) will not take any action that would make in a material respect any of its representations or warranties contained herein untrue or incorrect or would have the effect of preventing or disabling such Stockholder from performing any of its material obligations hereunder; *provided, however,* that Stockholder may transfer the Subject Shares (1) to Affiliates (including, for the avoidance of doubt, if Stockholder is a corporation, partnership, limited liability company, investment fund, trust or other business entity, such investment funds or other business entities controlled or managed by, or that controls or manages, or under common management with, the Stockholder) or charitable organizations, (2) if Stockholder is an individual, to any member of Stockholder's immediate family, or to a trust for the benefit of Stockholder or any member of Stockholder's immediate family for estate planning purposes or for the purposes of personal tax planning, or upon the death of Stockholder, by will or intestacy, (3) if Stockholder is a corporation, partnership, limited liability company, investment fund or other business entity, as part of a disposition, transfer or distribution by the Stockholder to its equity holders, (4) if the Stockholder is a trust, to a trustor or beneficiary of the trust; (5) to a nominee or custodian of a Person or entity to whom a disposition or transfer would be permissible under this clause, or (6) to the Company in an exchange of the Subject Shares in a Company Permitted Reorganization (any such transferee permitted under clauses (1) through (5), a "***Permitted Transferee***"); *provided, further,* that any such Transfer permitted under clauses (1) through (5) shall be permitted only if, as a precondition to such Transfer, the Permitted Transferee agrees in writing to be bound by all of the terms of this Agreement.

(b) Unless required by applicable Law or permitted by the Merger Agreement, such Stockholder will not, and will not authorize or direct any of its Affiliates, Representatives, employees or agents to, make any press release or public announcement with respect to this Agreement or the Merger Agreement or the transactions contemplated hereby or thereby, without the prior written consent of Parent in each instance.

2.5 **Non-Solicitation**. Each Stockholder hereby agrees to comply with the obligations of the Company and Representatives of the Company set forth in Section 4.5(a) of the Merger Agreement and not to take any action that would violate or breach, or cause the violation or breach of, Section 4.5(a) of the Merger Agreement.

ARTICLE 3.
REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS OF STOCKHOLDERS

Each Stockholder represents, warrants and covenants to Parent that:

3.1 **Ownership**. Except as described on Schedule A, such Stockholder is the sole Beneficial Owner or the record owner of the Subject Shares identified opposite such Stockholder's name on Schedule A and such Subject Shares constitute all of the capital stock of the Company Beneficially Owned by such Stockholder. Such Stockholder has good and valid title to all of the Subject Shares, free and clear of all Liens, claims, options, proxies, voting agreements and security interests and has the sole right to such Subject Shares and there are no restrictions on rights of disposition or other Liens pertaining to such Subject Shares. None of the Subject Shares is subject to any voting trust or other contract with respect to the voting thereof, and no proxy, power of attorney or other authorization has been granted with respect to any of such Subject Shares.

3.2 **Authority and Non-Contravention**.

(a) Such Stockholder has all necessary power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by such Stockholder and the consummation by such Stockholder of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and no other proceedings on the part of such Stockholder are necessary to authorize this Agreement or to consummate the transactions contemplated hereby.

(b) This Agreement has been duly and validly executed and delivered by such Stockholder and, assuming due authorization, execution and delivery of this Agreement by Parent, constitutes the legal, valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with its terms except (i) to the extent limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(c) Such Stockholder is not nor will it be required to make any filing with or give any notice to, or to obtain any consent from, any Person in connection with the execution, delivery or performance of this Agreement or obtain any permit or approval from any Governmental Entity for any of the transactions contemplated hereby, except to the extent required by Section 13 or Section 16 of the Exchange Act and the rules promulgated thereunder.

(d) Neither the execution and delivery of this Agreement by such Stockholder nor the consummation of the transactions contemplated hereby will directly or indirectly (whether with notice or lapse of time or both) (i) conflict with, result in any violation of or constitute a default by such Stockholder under any mortgage, bond, indenture, agreement, instrument or obligation to which such Stockholder is a party or by which it or any of the Subject Shares are bound, or violate any permit of any Governmental Entity, or any applicable Law to which such Stockholder, or any of the Subject Shares, may be subject, or violate any organizational documents of such Stockholder or (ii) result in the imposition or creation of any Lien upon or with respect to any of the Subject Shares; except, in each case, for conflicts, violations, defaults or Liens that would not individually or in the aggregate be reasonably expected to prevent or materially impair or delay the performance by such Stockholder of its obligations hereunder.

(e) Such Stockholder has sole voting power and sole power to issue instructions with respect to the matters set forth in Article II hereof and sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of the Subject Shares, with no limitations, qualifications or restrictions on such rights.

3.3 **Total Shares**. Except as set forth on Schedule A, such Stockholder is the Beneficial Owner of, and does not have (whether currently, upon lapse of time, following the satisfaction of any conditions, upon the occurrence of any event or any combination of the foregoing) any right to acquire, any Company Shares or any securities convertible into or exchangeable or exercisable for Company Shares.

3.4 **Reliance**. Each Stockholder understands and acknowledges that Parent is entering into the Merger Agreement in reliance upon the Stockholders' execution, delivery and performance of this Agreement.

ARTICLE 4.
REPRESENTATIONS, WARRANTIES AND COVENANTS OF PARENT

Parent represents, warrants and covenants to Stockholders that:

(a) Parent has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery by Parent of this Agreement and the consummation by Parent of the transactions contemplated hereby have been duly and validly authorized by Parent and no other corporate proceedings on the part of Parent are necessary to authorize this Agreement or to consummate the transactions contemplated hereby.

(b) This Agreement has been duly and validly executed and delivered by Parent and, assuming due authorization, execution and delivery of this Agreement by the Stockholders, constitutes the legal, valid and binding obligation of Parent, enforceable against Parent in accordance with its terms, except (i) to the extent limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

ARTICLE 5.
DISSENTERS' RIGHTS

5.1 Stockholder hereby waives and agrees not to exercise any rights of appraisal or any dissenters' rights that Stockholder may have (whether under applicable Law or otherwise) or could potentially have or acquire in connection with the Merger.

ARTICLE 6.
TERM AND TERMINATION

6.1 This Agreement will become effective upon its execution by the Stockholders and Parent. This Agreement will terminate upon the earliest of (a) the Effective Time, (b) the termination of the Merger Agreement in accordance with Article 7 thereof, or (c) written notice by Parent to the Stockholders of the termination of this Agreement (the date of the earliest of the events described in clauses (a), (b) and (c), the "***Termination Date***"). Notwithstanding the foregoing, Article VII of this Agreement shall survive any termination hereof.

ARTICLE 7.
GENERAL PROVISIONS

7 . 1 **Action in Stockholder Capacity Only**. Each Stockholder is entering into this Agreement solely in such Stockholder's capacity as a record holder or Beneficial Owner, as applicable, of the Subject Shares and not in such Stockholder's capacity as a director or officer of the Company. Notwithstanding any asserted conflict, nothing herein will limit or affect any Stockholder's ability to act as an officer or director of the Company, including, if Stockholder is a director of the Company, its ability to vote in favor of a Company Change of Recommendation, or to make any presentations to the Board of Directors of the Company or take any other action that he or she determines to be necessary or appropriate in his or her discretion, without regard to this Agreement or any conflict of interest.

7 . 2 **No Ownership Interest**. Nothing contained in this Agreement will be deemed to vest in Parent or any of its Affiliates any direct or indirect ownership or incidents of ownership of or with respect to the Subject Shares. All rights, ownership and economic benefits of and relating to the Subject Shares will remain and belong to the Stockholders, and neither Parent nor any of its Affiliates will have any authority to manage, direct, superintend, restrict, regulate, govern or administer any of the policies or operations of the Company or exercise any power or authority to direct any Stockholder in the voting of any of the Subject Shares, except as otherwise expressly provided herein or in the Merger Agreement.

7.3 **Notices**. All notices and other communications hereunder shall be in writing (including email or similar writing) and must be given:

If to Parent, to:

MYnd Analytics, Inc.
26522 La Alameda, Suite 290
Mission Viejo, CA 92691
Attention: Patrick Herguth
Email: pherguth@myndanalytics.com

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

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Jeffrey Baumel
Ilan Katz
Email: jeffrey.baumel@dentons.com
ilan.katz@dentons.com

If to any Stockholder, to such Stockholder at its address set forth on Schedule A,

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

Emmaus Life Sciences, Inc.
21250 Hawthorne Boulevard
Suite 800, Torrance, CA 90503
Attention: General Counsel
Email: dshort@emmauslifesciences.com

or such other physical address or email address as a party may hereafter specify for the purpose by notice to the other parties hereto. Each notice, consent, waiver or other communication under this Agreement will be effective only (i) if given by email, when the email is transmitted to the email address specified in this Section 7.3 or (ii) if given by overnight courier or personal delivery when delivered at the physical address specified in this Section 7.3.

7 . 4 **Further Actions**. Upon the request of any party to this Agreement, the other party will (a) furnish to the requesting party any additional information, (b) execute and deliver, at their own expense, any other documents and (c) take any other actions as the requesting party may reasonably require to more effectively carry out the intent of this Agreement. Each Stockholder hereby agrees that Parent may publish and disclose in the Form S-4 Registration Statement and Joint Proxy Statement (including all documents and schedules filed with the SEC) such Stockholder's identity and ownership of Subject Shares and the nature of such Stockholder's commitments, arrangements, and understandings under this Agreement and may further file this Agreement as an exhibit to the Form S-4 Registration Statement or in any other filing made by the Parent with the SEC relating to the Merger Agreement or the transactions contemplated thereby.

7 . 5 **Entire Agreement and Modification**. This Agreement, the Proxy and any other documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, between the parties with respect to its subject matter and constitute (along with the documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented or otherwise modified except by a written document executed by the party against whose interest the modification will operate. The parties will not enter into any other agreement inconsistent with the terms and conditions of this Agreement and the Proxy, or that addresses any of the subject matters addressed in this Agreement and the Proxy.

7 . 6 **Drafting and Representation**. The parties agree that the terms and language of this Agreement were the result of negotiations between the parties and, as a result, there will be no presumption that any ambiguities in this Agreement will be resolved against any party. Any controversy over construction of this Agreement will be decided without regard to events of authorship or negotiation.

7.7 **Severability**. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without affecting the validity or enforceability of the remaining provisions hereof. Any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision will be interpreted to be only so broad as is enforceable.

7.8 **No Third-Party Rights**. No Stockholder may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Parent. Parent may not assign any of its rights or delegate any of its obligations under this Agreement with respect to any Stockholder without the prior written consent of such Stockholder. This Agreement will apply to, be binding in all respects upon, and inure to the benefit of each of the respective successors, personal or legal representatives, heirs, distributes, devisees, legatees, executors, administrators and permitted assigns of any Stockholder and the successors and permitted assigns of Parent. Nothing expressed or referred to in this Agreement will be construed to give any Person, other than the parties to this Agreement, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement except such rights as may inure to a successor or permitted assignee under this Section 7.8.

7.9 **Enforcement of Agreement**. Each Stockholder acknowledges and agrees that Parent could be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by any Stockholder could not be adequately compensated by monetary damages. Accordingly, each Stockholder agrees that, (a) it will waive, in any action for specific performance, the defense of adequacy of a remedy at law, and (b) in addition to any other right or remedy to which Parent may be entitled, at law or in equity, Parent will be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

7.10 **Waiver**. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by a party in exercising any right, power or privilege under this Agreement, the Proxy or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement, the Proxy or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in a written document signed by the other party, (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement, the Proxy or the documents referred to in this Agreement.

7.11 **Governing Law**. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto will be governed by, construed under and enforced in accordance with the laws of the State of Delaware, without giving effect to principles of conflict or choice of laws which would result in the application of the laws of any other jurisdiction.

7.12 **Consent to Jurisdiction**. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, the Proxy or the transactions contemplated hereby or thereby will be brought exclusively in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware and each of the parties hereto hereby consents to the exclusive jurisdiction of those courts (and of the appropriate appellate courts therefrom) in any suit, action or proceeding and irrevocably waives, to the fullest extent permitted by applicable Law, any objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding in any of those courts or that any suit, action or proceeding which is brought in any of those courts has been brought in an inconvenient forum. Process in any suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any of the named courts. Without limiting the foregoing, each party agrees that service of process on it by notice as provided in Section 7.3 will be deemed effective service of process. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

7.13 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same instrument. An electronic copy of a party's signature (including signatures in Adobe PDF or similar format) shall be deemed an original signature for purposes hereof.

7.14 **Expenses**. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such expenses.

7.15 **Headings; Construction**. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. In this Agreement (a) words denoting the singular include the plural and vice versa, (b) "it" or "its" or words denoting any gender include all genders and (c) the word "including" means "including without limitation," whether or not expressed.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Voting Agreement to be duly executed as of the day and year first above written.

PARENT:

MYND ANALYTICS, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Voting Agreement to be duly executed as of the day and year first above written.

STOCKHOLDERS:

INDIVIDUAL:

_____
(Print Name)

_____
(Signature)

_____
(Jurisdiction of Residence)

PARTNERSHIP, CORPORATION, LLC, TRUST OR OTHER ENTITY:

_____
(Print Name of Entity)

By: _____
(Signature)

_____
(Print Name)

_____
(Print Title)

_____
(Type of Entity)

_____
(Jurisdiction of Organization)

SCHEDULE A

Name and Contact Information	Shares of Company Common Stock	Company Convertible Notes	Company Warrants	Company Options	Beneficially Owned Shares with a Right to Vote
[Name] [Address] Attention: [●] Facsimile: [●] Email: [●]					

EXHIBIT A

IRREVOCABLE PROXY

From and after the date hereof and until the Termination Date (as defined below), on which date this irrevocable proxy (the "***proxy***") will terminate and be of no further force or effect, the undersigned stockholder ("***Stockholder***") of EMMAUS LIFE SCIENCES, INC., a Delaware corporation (the "***Company***"), hereby irrevocably (to the fullest extent permitted by Section 212 of the Delaware General Corporation Law) grants to, and appoints, MYND ANALYTICS, INC., a Delaware corporation (the "***Parent***"), and any designee of Parent, and each of them individually, as the sole and exclusive attorney and proxy of the undersigned, with full power of substitution and re-substitution, to vote the Subject Shares (as defined in the Voting Agreement) or to issue instructions to the record holder to vote the Subject Shares, or grant a consent or approval in respect of the Subject Shares or issue instructions to the record holder to grant a consent or approval in respect of the Subject Shares, in a manner consistent with Section 2.2 of the Voting Agreement (as defined below). Upon the undersigned's execution of this Proxy, any and all prior proxies given by the undersigned with respect to any Subject Shares relating to the voting rights expressly provided herein are hereby revoked and the undersigned agrees not to grant any subsequent proxies with respect to the Subject Shares relating to such voting rights at any time prior to the Termination Date, on which date this proxy will terminate and be of no further force or effect.

This Proxy is irrevocable, is coupled with an interest and is granted pursuant to that certain Voting Agreement (as amended from time to time, the "***Voting Agreement***") of even date herewith, by and among Parent and Stockholder, and is granted in consideration of Parent entering into the Merger Agreement (as defined in the Voting Agreement). As used herein, the term " ***Termination Date***," and all capitalized terms used herein and not otherwise defined, will have the meanings set forth in the Voting Agreement. **The Stockholder agrees that this proxy will be irrevocable until the Termination Date, on which date this proxy will terminate and be of no further force or effect, and is coupled with an interest sufficient at law to support an irrevocable proxy and given to Parent as an inducement to enter into the Merger Agreement and, to the extent permitted under applicable law, will be valid and binding on any Person to whom Stockholder may transfer any of his, her or its Subject Shares whether as permitted by or in breach of the Voting Agreement**. The Stockholder hereby ratifies and confirms all that such irrevocable proxy may lawfully do or cause to be done by virtue hereof.

The attorneys and proxies named above, and each of them, are hereby authorized and empowered by the undersigned, at any time prior to the Termination Date, on which date this proxy will terminate and be of no further force or effect, to act as the undersigned's attorney and proxy to vote the Subject Shares, and to exercise all voting and other rights of the undersigned with respect to the Subject Shares (including, without limitation, the power to execute and deliver written consents pursuant to Section 228 of the Delaware General Corporation Law), at every annual, special or adjourned meeting of the stockholders of the Company and in every written consent in lieu of such meeting in a manner consistent with Section 2.2 of the Voting Agreement. Provided, however, that this proxy will not limit the right of any Stockholder to vote at any meeting or to act by written consent in a manner consistent with the Voting Agreement.

This Proxy will be binding upon the heirs, estate, executors, personal representatives, successors and assigns of Stockholder (including any transferee of any of the Subject Shares), and all authority herein conferred or agreed to be conferred will survive the death or incapacity of the Stockholder.

If any provision of this Proxy or any part of any such provision is held under any circumstances to be invalid or unenforceable in any jurisdiction, then (a) such provision or part thereof will, with respect to such circumstances and in such jurisdiction, be deemed amended to conform to applicable laws so as to be valid and enforceable to the fullest possible extent, (b) the invalidity or unenforceability of such provision or part thereof under such circumstances and in such jurisdiction will not affect the validity or enforceability of such provision or part thereof under any other circumstances or in any other jurisdiction, and (c) the invalidity or unenforceability of such provision or part thereof will not affect the validity or enforceability of the remainder of such provision or the validity or enforceability of any other provision of this Proxy. Each provision of this Proxy is separable from every other provision of this Proxy, and each part of each provision of this Proxy is separable from every other part of such provision.

With respect to any Subject Shares that are Beneficially Owned (as defined in the Voting Agreement) by the Stockholder but are not held of record by the Stockholder, the Stockholder shall take all action necessary to cause the record holder of such Subject Shares to grant the irrevocable proxy and take all other actions provided for in this proxy with respect to such Subject Shares.

(Signature page follows)

Dated: January [●], 2019

INDIVIDUAL:

(Print Name)

(Signature)

(Jurisdiction of Residence)

PARTNERSHIP, CORPORATION, LLC, TRUST OR OTHER ENTITY:

(Print Name of Entity)

By:

(Signature)

(Print Name)

(Print Title)

(Type of Entity)

(Jurisdiction of Organization)

Exhibit 10.3

FORM OF MYND VOTING AGREEMENT

This VOTING AGREEMENT (this "***Agreement***"), dated as of January 4, 2019, is by and between, EMMAUS LIFE SCIENCES, INC., a Delaware corporation (the "***Company***"), and each of the undersigned stockholders (each, a "***Stockholder***," and, collectively, the "***Stockholders***") of MYND ANALYTICS, INC., a Delaware corporation ("***Parent***"), identified on the signature page hereto.

A. The Company, Parent, and ATHENA MERGER SUBSIDIARY INC., a Delaware corporation and a direct wholly owned subsidiary of Parent ("***Merger Sub***"), have entered into that certain Agreement and Plan of Merger and Reorganization (as amended from time to time, the "***Merger Agreement***"), dated as of January 4, 2019, pursuant to which Merger Sub will merge with and into the Company (the "***Merger***") and the Company will continue as a direct wholly owned subsidiary of Parent; and

B. As of the date hereof, each Stockholder is the Beneficial Owner (as defined below) of, and has the sole right to vote and dispose of, that number of each class of the issued and outstanding capital stock of Parent (the "***Parent Shares***") set forth opposite such Stockholder's name onSchedule A hereto; and

C. Concurrently with the entry by the Company, Parent and Merger Sub into the Merger Agreement, and as a condition and inducement to the willingness of the Company to enter into the Merger Agreement and incur the obligations set forth therein, the Company has required that the Stockholders enter into this Agreement.

Accordingly, and in consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I.
DEFINITIONS

Capitalized terms used but not defined in this Agreement are used in this Agreement with the meanings given to such terms in the Merger Agreement. In addition, for purposes of this Agreement:

"***Affiliate***" means, with respect to any specified Person, a Person who, at the time of determination, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person. For purposes of this Agreement, with respect to a Stockholder, " ***Affiliate***" does not include Parent and the Persons that directly, or indirectly through one or more intermediaries, are controlled by Parent. For the avoidance of doubt, no officer or director of Parent will be deemed an Affiliate of another officer or director of Parent by virtue of his or her status as an officer or director of Parent.

"***Beneficial Owner***" with respect to any securities means a Person that has Beneficial Ownership of such securities.

"***Beneficially Owned***" or "***Beneficial Ownership***" with respect to any securities means having beneficial ownership of such securities (as determined pursuant to Rule 13d-3 under the Exchange Act, disregarding the phrase "within 60 days" in paragraph (d)(1)(i) thereof), including pursuant to any agreement, arrangement or understanding, whether or not in writing. Without duplicative counting of the same securities, securities Beneficially Owned by a Person include securities Beneficially Owned by (i) all Affiliates of such Person, and (ii) all other Persons with whom such Person would constitute a "group" within the meaning of Section 13(d) of the Exchange Act and the rules promulgated thereunder.

"***Subject Shares***" means, with respect to a Stockholder, without duplication, (i) the Parent Shares Beneficially Owned by such Stockholder on the date hereof as described on Schedule A, (ii) any additional Parent Shares Beneficially Owned or acquired by such Stockholder, including those over which such Stockholder acquires Beneficial Ownership from and after the date hereof, whether pursuant to existing stock option agreements, warrants or otherwise, and (iii) any securities converted, exchanged or reclassified into Parent Shares. Without limiting the other provisions of this Agreement, in the event that Parent changes the number of Parent Shares issued and outstanding prior to the Termination Date as a result of a reclassification, stock split (including a reverse stock split), stock dividend or distribution, combination, recapitalization, subdivision, or other similar transaction, the number of Subject Shares subject to this Agreement will be equitably adjusted to reflect such change.

"***Transfer***" means, with respect to a security, the sale, transfer, pledge, hypothecation, encumbrance, assignment or disposition of such security or the Beneficial Ownership thereof, whether by operation of Law or otherwise, and each option, agreement, arrangement or understanding, whether or not in writing, to effect any of the foregoing. As a verb, "***Transfer***" has a correlative meaning.

ARTICLE II.
COVENANTS OF STOCKHOLDERS

2 . 1 **Irrevocable Proxy**. Concurrently with the execution of this Agreement, each Stockholder agrees to deliver to the Company a proxy in the form attached hereto as Exhibit A (the "***Proxy***"), which will be irrevocable to the extent provided therein, with respect to the Subject Shares referred to therein.

2.2 **Agreement to Vote**.

(a) At each and every meeting of the stockholders of Parent held prior to the Termination Date, however called, and at every adjournment or postponement thereof prior to the Termination Date, or in connection with each and every written consent of, or any other action by, the stockholders of Parent given or solicited prior to the Termination Date, each Stockholder will vote or provide a consent with respect to, or shall cause the holder of record on any applicable record date to vote or provide a consent with respect to, all of the Subject Shares entitled to vote or to consent thereon (i) in favor of the adoption of the Merger Agreement, the issuance of Parent Shares to the Company Stockholders pursuant to the terms of the Merger Agreement, and any other actions contemplated by the Merger Agreement, including the Parent Stockholder Proposals, and (ii) against any amendment of Parent's certificate of incorporation or bylaws or any other proposal or transaction involving Parent, the effect of which amendment or other proposal or transaction is to delay, impair, prevent or nullify the Merger or the transactions contemplated by the Merger Agreement or change in any manner the voting rights of any capital stock of Parent, and against any other action or agreement that would result in a breach in any material respect of any covenant, representation or warranty or any other obligation or agreement of Parent or its stockholders under the Merger Agreement. Notwithstanding any other provision of this Agreement, each Stockholder's obligations under this Section 2.2(a) shall not extend to any modification or amendment to the Merger Agreement unless such stockholder otherwise agrees in a subsequent writing.

(b) No Stockholder will enter into any agreement with any Person (other than the Company) prior to the Termination Date (with respect to periods prior to or after the Termination Date) directly or indirectly to vote, consent, grant any proxy or give instructions with respect to the voting of, the Subject Shares in respect of the matters described in Section 2.2(a) hereof, or the effect of which would be inconsistent with or violate any provision contained in this Section 2.2. Any vote or consent (or withholding of consent) by any Stockholder that is not in accordance with this Section 2.2 will be considered null and void,.

2.3 **Revocation of Proxies; Cooperation**. Each Stockholder agrees as follows:

(a) Such Stockholder hereby represents and warrants that any proxies heretofore given in respect of the Subject Shares with respect to the matters described in Section 2.2(a) hereof are not irrevocable, and such Stockholder hereby revokes any and all prior proxies with respect to such Subject Shares as they relate to such matters. Prior to the Termination Date, such Stockholder will not directly or indirectly grant any proxies or powers of attorney with respect to the matters set forth in Section 2.2(a) hereof (other than to the Company), deposit any of the Subject Shares or enter into a voting agreement (other than this Agreement) with respect to any of the Subject Shares relating to any matter described in Section 2.2(a).

(b) Such Stockholder will provide any information reasonably requested by the Company or Parent for any regulatory application or filing sought for such transactions.

2.4 **No Transfer of Subject Shares; Publicity**. Each Stockholder agrees that:

(a) It (i) will not Transfer or agree to Transfer any of the Subject Shares or, with respect to any matter described in Section 2.2(a), grant any proxy or power-of-attorney with respect to any of the Subject Shares, (ii) will take all action reasonably necessary to prevent creditors in respect of any pledge of the Subject Shares from exercising their rights under such pledge, and (iii) will not take any action that would make in a material respect any of its representations or warranties contained herein untrue or incorrect or would have the effect of preventing or disabling such Stockholder from performing any of its material obligations hereunder; *provided, however,* that Stockholder may transfer the Subject Shares (1) to Affiliates (including, for the avoidance of doubt, if Stockholder is a corporation, partnership, limited liability company, investment fund, trust or other business entity, such investment funds or other business entities controlled or managed by, or that controls or manages, or under common management with, the Stockholder) or charitable organizations, (2) if Stockholder is an individual, to any member of Stockholder's immediate family, or to a trust for the benefit of Stockholder or any member of Stockholder's immediate family for estate planning purposes or for the purposes of personal tax planning, or upon the death of Stockholder, by will or intestacy, (3) if Stockholder is a corporation, partnership, limited liability company, investment fund or other business entity, as part of a disposition, transfer or distribution by the Stockholder to its equity holders, (4) if the Stockholder is a trust, to a trustor or beneficiary of the trust; (5) to a nominee or custodian of a Person or entity to whom a disposition or transfer would be permissible under this clause or (6) to Parent in an exchange of the Subject Shares in a Parent Permitted Reorganization (any such transferee permitted under clauses (1) through (5), a "***Permitted Transferee***"); *provided, further,* that any such Transfer permitted under clauses (1) through (5) shall be permitted only if, as a precondition to such Transfer, the Permitted Transferee agrees in writing to be bound by all of the terms of this Agreement.

(b) Unless required by applicable Law or permitted by the Merger Agreement, such Stockholder will not, and will not authorize or direct any of its Affiliates, Representatives, employees or agents to, make any press release or public announcement with respect to this Agreement or the Merger Agreement or the transactions contemplated hereby or thereby, without the prior written consent of the Company in each instance.

2.5 **Resignation**. Each Stockholder that is a director or officer of Parent and who has not been designated to serve as a director of Parent immediately after the Effective Time pursuant to the Merger Agreement, hereby resigns as a director and officer of Parent and every direct or indirect subsidiary or other Affiliate thereof, effective as of immediately prior to the Effective Time.

2.6 **Non-Solicitation**. Each Stockholder hereby agrees to comply with the obligations of the Company and Representatives of the Company set forth in Section 4.5(a) of the Merger Agreement and not to take any action that would violate or breach, or cause the violation or breach of, Section 4.5(a) of the Merger Agreement.

ARTICLE III.
REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS OF STOCKHOLDERS

Each Stockholder represents, warrants and covenants to the Company that:

3.1 **Ownership**. Except as described on Schedule A, such Stockholder is the sole Beneficial Owner or the record owner of the Subject Shares identified opposite such Stockholder's name on Schedule A and such Subject Shares constitute all of the capital stock of Parent Beneficially Owned by such Stockholder. Such Stockholder has good and valid title to all of the Subject Shares, free and clear of all Liens, claims, options, proxies, voting agreements and security interests and has the sole right to such Subject Shares and there are no restrictions on rights of disposition or other Liens pertaining to such Subject Shares. None of the Subject Shares is subject to any voting trust or other contract with respect to the voting thereof, and no proxy, power of attorney or other authorization has been granted with respect to any of such Subject Shares.

3.2 **Authority and Non-Contravention**.

(a) Such Stockholder has all necessary power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by such Stockholder and the consummation by such Stockholder of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and no other proceedings on the part of such Stockholder are necessary to authorize this Agreement or to consummate the transactions contemplated hereby.

(b) This Agreement has been duly and validly executed and delivered by such Stockholder and, assuming due authorization, execution and delivery of this Agreement by the Company, constitutes the legal, valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with its terms except (i) to the extent limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(c) Such Stockholder is not nor will it be required to make any filing with or give any notice to, or to obtain any consent from, any Person in connection with the execution, delivery or performance of this Agreement or obtain any permit or approval from any Governmental Entity for any of the transactions contemplated hereby, except to the extent required by Section 13 or Section 16 of the Exchange Act and the rules promulgated thereunder.

(d) Neither the execution and delivery of this Agreement by such Stockholder nor the consummation of the transactions contemplated hereby will directly or indirectly (whether with notice or lapse of time or both) (i) conflict with, result in any violation of or constitute a default by such Stockholder under any mortgage, bond, indenture, agreement, instrument or obligation to which such Stockholder is a party or by which it or any of the Subject Shares are bound, or violate any permit of any Governmental Entity, or any applicable Law to which such Stockholder, or any of the Subject Shares, may be subject, or violate any organizational documents of such Stockholder or (ii) result in the imposition or creation of any Lien upon or with respect to any of the Subject Shares; except, in each case, for conflicts, violations, defaults or Liens that would not individually or in the aggregate be reasonably expected to prevent or materially impair or delay the performance by such Stockholder of its obligations hereunder.

(e) Such Stockholder has sole voting power and sole power to issue instructions with respect to the matters set forth in Article II hereof and sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of the Subject Shares, with no limitations, qualifications or restrictions on such rights.

3.3 **Total Shares**. Except as set forth on Schedule A, such Stockholder is the Beneficial Owner of, and does not have (whether currently, upon lapse of time, following the satisfaction of any conditions, upon the occurrence of any event or any combination of the foregoing) any right to acquire, any Parent Shares or any securities convertible into or exchangeable or exercisable for Parent Shares.

3 . 4 **Reliance**. Each Stockholder understands and acknowledges that the Company is entering into the Merger Agreement in reliance upon Stockholders' execution, delivery and performance of this Agreement.

ARTICLE IV.
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY

The Company represents, warrants and covenants to Stockholders that:

(a) The Company has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by the Company and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions contemplated hereby.

(b) This Agreement has been duly and validly executed and delivered by the Company and, assuming due authorization, execution and delivery of this Agreement by the Stockholders, constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except (i) to the extent limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

ARTICLE V.
DISSENTERS' RIGHTS

5.1 Stockholder hereby waives and agrees not to exercise any rights of appraisal or any dissenters' rights that Stockholder may have (whether under applicable Law or otherwise) or could potentially have or acquire in connection with the Merger.

ARTICLE VI.
TERM AND TERMINATION

6.1 This Agreement will become effective upon its execution by the Stockholders and the Company. This Agreement will terminate upon the earliest of (a) the Effective Time, (b) the termination of the Merger Agreement in accordance with Article 7 thereof, or (c) written notice by the Company to the Stockholders of the termination of this Agreement (the date of the earliest of the events described in clauses (a), (b) and (c), the "***Termination Date***"). Notwithstanding the foregoing, Article VII of this Agreement shall survive any termination hereof.

ARTICLE VII.
GENERAL PROVISIONS

7 . 1 **Action in Stockholder Capacity Only**. Each Stockholder is entering into this Agreement solely in such Stockholder's capacity as a record holder or Beneficial Owner, as applicable, of the Subject Shares and not in such Stockholder's capacity as a director or officer of Parent. Notwithstanding any asserted conflict, nothing herein will limit or affect any Stockholder's ability to act as an officer or director of Parent, including, if Stockholder is a director of Parent, its ability to vote in favor of a Parent Change of Recommendation, or to make any presentations to the Parent Board of Directors or take any other action that he or she determines to be necessary or appropriate in his or her discretion, without regard to this Agreement or any conflict of interest.

7.2 **No Ownership Interest**. Nothing contained in this Agreement will be deemed to vest in the Company or any of its Affiliates any direct or indirect ownership or incidents of ownership of or with respect to the Subject Shares. All rights, ownership and economic benefits of and relating to the Subject Shares will remain and belong to the Stockholders, and neither the Company nor any of its Affiliates will have any authority to manage, direct, superintend, restrict, regulate, govern or administer any of the policies or operations of Parent or exercise any power or authority to direct any Stockholder in the voting of any of the Subject Shares, except as otherwise expressly provided herein or in the Merger Agreement.

7.3 **Notices**. All notices and other communications hereunder shall be in writing (including email or similar writing) and must be given

If to the Company, to:

Emmaus Life Sciences, Inc.
21250 Hawthorne Boulevard
Suite 800, Torrance, CA 90503
Attention: Chief Executive Officer
Email: yniihara@emmauslifesciences.com

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

Emmaus Life Sciences, Inc.
21250 Hawthorne Boulevard
Suite 800, Torrance, CA 90503
Attention: General Counsel
Email: dshort@emmauslifesciences.com

If to any Stockholder, to such Stockholder at its address set forth on Schedule A,

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

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Jeffrey Baumel
Ilan Katz
Email: jeffrey.baumel@dentons.com
ilan.katz@dentons.com

or such other physical address or email address as a party may hereafter specify for the purpose by notice to the other parties hereto. Each notice, consent, waiver or other communication under this Agreement will be effective only (i) if given by email, when the email is transmitted to the email address specified in this Section 7.3 or (ii) if given by overnight courier or personal delivery when delivered at the physical address specified in this Section 7.3.

7 . 4 **Further Actions**. Upon the request of any party to this Agreement, the other party will (a) furnish to the requesting party any additional information, (b) execute and deliver, at their own expense, any other documents and (c) take any other actions as the requesting party may reasonably require to more effectively carry out the intent of this Agreement. Each Stockholder hereby agrees that Parent may publish and disclose in the Form S-4 Registration Statement and Joint Proxy Statement (including all documents and schedules filed with the SEC) such Stockholder's identity and ownership of Subject Shares and the nature of such Stockholder's commitments, arrangements, and understandings under this Agreement and may further file this Agreement as an exhibit to the Form S-4 Registration Statement or in any other filing made by the Parent with the SEC relating to the Merger Agreement or the transactions contemplated thereby.

7 . 5 **Entire Agreement and Modification**. This Agreement, the Proxy and any other documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, between the parties with respect to its subject matter and constitute (along with the documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented or otherwise modified except by a written document executed by the party against whose interest the modification will operate. The parties will not enter into any other agreement inconsistent with the terms and conditions of this Agreement and the Proxy, or that addresses any of the subject matters addressed in this Agreement and the Proxy.

7.6 **Drafting and Representation**. The parties agree that the terms and language of this Agreement were the result of negotiations between the parties and, as a result, there will be no presumption that any ambiguities in this Agreement will be resolved against any party. Any controversy over construction of this Agreement will be decided without regard to events of authorship or negotiation.

7 . 7 **Severability**. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without affecting the validity or enforceability of the remaining provisions hereof. Any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision will be interpreted to be only so broad as is enforceable.

7 . 8 **No Third-Party Rights**. No Stockholder may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the Company. The Company may not assign any of its rights or delegate any of its obligations under this Agreement with respect to any Stockholder without the prior written consent of such Stockholder. This Agreement will apply to, be binding in all respects upon, and inure to the benefit of each of the respective successors, personal or legal representatives, heirs, distributes, devisees, legatees, executors, administrators and permitted assigns of any Stockholder and the successors and permitted assigns of the Company. Nothing expressed or referred to in this Agreement will be construed to give any Person, other than the parties to this Agreement, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement except such rights as may inure to a successor or permitted assignee under this Section 7.8.

7.9 **Enforcement of Agreement**. Each Stockholder acknowledges and agrees that the Company could be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by any Stockholder could not be adequately compensated by monetary damages. Accordingly, each Stockholder agrees that, (a) it will waive, in any action for specific performance, the defense of adequacy of a remedy at law, and (b) in addition to any other right or remedy to which the Company may be entitled, at law or in equity, the Company will be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

7.10 **Waiver**. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by a party in exercising any right, power or privilege under this Agreement, the Proxy or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement, the Proxy or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in a written document signed by the other party, (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement, the Proxy or the documents referred to in this Agreement.

7.11 **Governing Law**. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto will be governed by, construed under and enforced in accordance with the laws of the State of Delaware, without giving effect to principles of conflict or choice of laws which would result in the application of the laws of any other jurisdiction.

7.12 **Consent to Jurisdiction**. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, the Proxy or the transactions contemplated hereby or thereby will be brought exclusively in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware and each of the parties hereto hereby consents to the exclusive jurisdiction of those courts (and of the appropriate appellate courts therefrom) in any suit, action or proceeding and irrevocably waives, to the fullest extent permitted by applicable Law, any objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding in any of those courts or that any suit, action or proceeding which is brought in any of those courts has been brought in an inconvenient forum. Process in any suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any of the named courts. Without limiting the foregoing, each party agrees that service of process on it by notice as provided in Section 7.3 will be deemed effective service of process. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

7.13 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same instrument. An electronic copy of a party's signature (including signatures in Adobe PDF or similar format) shall be deemed an original signature for purposes hereof.

7.14 **Expenses**. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such expenses.

7.15 **Headings; Construction**. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. In this Agreement (a) words denoting the singular include the plural and vice versa, (b) "it" or "its" or words denoting any gender include all genders and (c) the word "including" means "including without limitation," whether or not expressed.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Voting Agreement to be duly executed as of the day and year first above written.

THE COMPANY:

EMMAUS LIFE SCIENCES, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Voting Agreement to be duly executed as of the day and year first above written.

STOCKHOLDERS:

INDIVIDUAL:

_____
(Print Name)

_____
(Signature)

_____
(Jurisdiction of Residence)

PARTNERSHIP, CORPORATION, LLC, TRUST OR OTHER ENTITY:

_____
(Print Name of Entity)

By: _____
(Signature)

_____
(Print Name)

_____
(Print Title)

_____
(Type of Entity)

_____
(Jurisdiction of Organization)

SCHEDULE A

Name and Contact Information	Shares of Parent Common Stock	Shares of Parent Preferred Stock	Parent Warrants	Parent Options	Beneficially Owned Shares with a Right to Vote
[Name] [Address] Attention: [●] Facsimile: [●] Email: [●]					

EXHIBIT A

IRREVOCABLE PROXY

From and after the date hereof and until the Termination Date (as defined below), on which date this irrevocable proxy (the "***proxy***") will terminate and be of no further force or effect, the undersigned stockholder ("***Stockholder***") of MYND ANALYTICS, INC., a Delaware corporation ("***Parent***"), hereby irrevocably (to the fullest extent permitted by Section 212 of the Delaware General Corporation Law) grants to, and appoints, EMMAUS LIFE SCIENCES, INC., a Delaware corporation (the "***Company***"), and any designee of the Company, and each of them individually, as the sole and exclusive attorney and proxy of the undersigned, with full power of substitution and re-substitution, to vote the Subject Shares (as defined in the Voting Agreement) or to issue instructions to the record holder to vote the Subject Shares, or grant a consent or approval in respect of the Subject Shares or issue instructions to the record holder to grant a consent or approval in respect of the Subject Shares, in a manner consistent with Section 2.2 of the Voting Agreement (as defined below). Upon the undersigned's execution of this Proxy, any and all prior proxies given by the undersigned with respect to any Subject Shares relating to the voting rights expressly provided herein are hereby revoked and the undersigned agrees not to grant any subsequent proxies with respect to the Subject Shares relating to such voting rights at any time prior to the Termination Date, on which date this proxy will terminate and be of no further force or effect.

This Proxy is irrevocable, is coupled with an interest and is granted pursuant to that certain Voting Agreement (as amended from time to time, the "***Voting Agreement***") of even date herewith, by and among the Company and Stockholder, and is granted in consideration of the Company entering into the Merger Agreement (as defined in the Voting Agreement). As used herein, the term " ***Termination Date***," and all capitalized terms used herein and not otherwise defined, will have the meanings set forth in the Voting Agreement. **The Stockholder agrees that this proxy will be irrevocable until the Termination Date, on which date this proxy will terminate and be of no further force or effect, and is coupled with an interest sufficient at law to support an irrevocable proxy and given to the Company as an inducement to enter into the Merger Agreement and, to the extent permitted under applicable law, will be valid and binding on any Person to whom Stockholder may transfer any of his, her or its Subject Shares whether as permitted by or in breach of the Voting Agreement**. The Stockholder hereby ratifies and confirms all that such irrevocable proxy may lawfully do or cause to be done by virtue hereof.

The attorneys and proxies named above, and each of them, are hereby authorized and empowered by the undersigned, at any time prior to the Termination Date, on which date this proxy will terminate and be of no further force or effect, to act as the undersigned's attorney and proxy to vote the Subject Shares, and to exercise all voting and other rights of the undersigned with respect to the Subject Shares (including, without limitation, the power to execute and deliver written consents pursuant to Section 228 of the Delaware General Corporation Law), at every annual, special or adjourned meeting of the stockholders of Parent and in every written consent in lieu of such meeting in a manner consistent with Section 2.2 of the Voting Agreement. Provided, however, that this proxy will not limit the right of any Stockholder to vote at any meeting or to act by written consent in a manner consistent with the Voting Agreement.

This Proxy will be binding upon the heirs, estate, executors, personal representatives, successors and assigns of Stockholder (including any transferee of any of the Subject Shares), and all authority herein conferred or agreed to be conferred will survive the death or incapacity of the Stockholder.

If any provision of this Proxy or any part of any such provision is held under any circumstances to be invalid or unenforceable in any jurisdiction, then (a) such provision or part thereof will, with respect to such circumstances and in such jurisdiction, be deemed amended to conform to applicable laws so as to be valid and enforceable to the fullest possible extent, (b) the invalidity or unenforceability of such provision or part thereof under such circumstances and in such jurisdiction will not affect the validity or enforceability of such provision or part thereof under any other circumstances or in any other jurisdiction, and (c) the invalidity or unenforceability of such provision or part thereof will not affect the validity or enforceability of the remainder of such provision or the validity or enforceability of any other provision of this Proxy. Each provision of this Proxy is separable from every other provision of this Proxy, and each part of each provision of this Proxy is separable from every other part of such provision.

With respect to any Subject Shares that are Beneficially Owned (as defined in the Voting Agreement) by the Stockholder but are not held of record by the Stockholder, the Stockholder shall take all action necessary to cause the record holder of such Subject Shares to grant the irrevocable proxy and take all other actions provided for in this proxy with respect to such Subject Shares.

(Signature Page Follows)

Dated: January [●], 2019

INDIVIDUAL:

(Print Name)

(Signature)

(Jurisdiction of Residence)

PARTNERSHIP, CORPORATION, LLC, TRUST OR OTHER ENTITY:

(Print Name of Entity)

By:

(Signature)

(Print Name)

(Print Title)

(Type of Entity)

(Jurisdiction of Organization)

Exhibit 10.4

FORM OF EMMAUS LOCK-UP AGREEMENT

This LOCK-UP AGREEMENT (this "***Agreement***"), dated as of January 4, 2019, is being executed and delivered as of January 4, 2019, by [●] (***Stockholder***") in favor of and for the benefit of MYND ANALYTICS, INC. ("***Parent***").

RECITALS

A. Stockholder is a director or officer of EMMAUS LIFE SCIENCES, INC. (the "***Company***").

B. The Company, Parent, and ATHENA MERGER SUBSIDIARY INC., a Delaware corporation and a direct wholly owned subsidiary of Parent ("***Merger Sub***"), have entered into that certain Agreement and Plan of Merger and Reorganization (as amended from time to time, the "***Merger Agreement***"), dated as of January 4, 2019, pursuant to which Merger Sub will merge with and into the Company (the "***Merger***") and the Company will continue as a direct wholly owned subsidiary of Parent.

C. The Merger Agreement contemplates that Stockholder will receive shares of Parent Common Stock in the Merger (the "***Parent Shares***") and that the Stockholder will be subject to certain restrictions on transfer of such shares as provided herein.

Stockholder, intending to be legally bound, agrees as follows:

1 . Defined Terms. Each capitalized term used in this Agreement but not otherwise defined herein shall have the meaning ascribed thereto in the Merger Agreement.

2. Representations and Warranties of Stockholder. Stockholder represents and warrants to Parent as of the date hereof as follows:

(a) Stockholder is the holder and "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***")) of the number of outstanding shares of common stock of the Company set forth on Schedule I hereto (the "***Company Shares***"), and Stockholder has good and valid title to the Company Shares, free and clear of any liens, pledges, security interests, adverse claims, equities, options, proxies, charges, encumbrances or restrictions of any nature, other than as otherwise restricted under the Securities Act of 1933, as amended (the "***Securities Act***"), and other applicable securities laws and regulations.

(b) Stockholder has the sole right to vote and to dispose of the Company Shares.

(c) Stockholder has read this Agreement and, to the extent Stockholder felt necessary, has discussed with counsel the limitations imposed on Stockholder's ability to sell, transfer or otherwise dispose of the Parent Shares. Stockholder fully understands the limitations this Agreement places upon Stockholder's ability to sell, transfer or otherwise dispose of the Parent Shares.

3. Lock-Up.

(a) Stockholder will not, during the period commencing on the date of the Effective Time of the Merger and, subject to the terms set forth herein, ending 120 days after the Effective Time of the Merger (the "***Lock-up Period***"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Parent Shares, or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Parent Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of the Parent Shares, in cash or otherwise.

(b) Notwithstanding the foregoing, Stockholder may transfer Parent Shares (i) to Affiliates (including, for the avoidance of doubt, if Stockholder is a corporation, partnership, limited liability company, investment fund, trust or other business entity, such investment funds or other business entities controlled or managed by, or that controls or manages, or under common management with, the Stockholder) or charitable organizations; (ii) if Stockholder is an individual, to any member of Stockholder's immediate family, or to a trust for the benefit of Stockholder or any member of Stockholder's immediate family for estate planning purposes or for the purposes of personal tax planning, or upon the death of Stockholder, by will or intestacy; (iii) if Stockholder is a corporation, partnership, limited liability company, investment fund or other business entity, as part of a disposition, transfer or distribution by the Stockholder to its equity holders; (iv) if the Stockholder is a trust, to a trustor or beneficiary of the trust; or (v) to a nominee or custodian of a Person or entity to whom a disposition or transfer would be permissible under this clause (b); provided, however, that any such transfer shall be permitted under this clause (b) only if, as a precondition to such transfer, such donee, transferee or distributee agrees in writing to be bound by all of the terms of this Agreement. In addition, notwithstanding the foregoing, the restrictions set forth herein shall not apply to the establishment of a trading plan that complies with Rule 10b5-1 under the Exchange Act; provided, however, that the restrictions shall apply in full force to sales pursuant to the trading plan during the Lock-Up Period.

(c) For the avoidance of doubt, the restrictions in this Agreement shall apply only to (i) the Parent Shares received in the Merger and (ii) Parent Shares issued upon exercise of options to acquire Parent Shares outstanding immediately after the Effective Time of the Merger, and to no other security of Parent or any Affiliate thereof.

4 . Stop Transfer Instructions. Stockholder acknowledges and agrees that stop transfer instructions will be given to Parent's transfer agent with respect to the Parent Shares until the expiration of the Lock-Up Period.

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

6 . Specific Performance. Stockholder acknowledges that Parent could be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by Stockholder could not be adequately compensated by monetary damages. Accordingly, Stockholder agrees that (a) it will waive, in any action for specific performance, the defense of adequacy of a remedy at law, and (b) in addition to any other right or remedy to which Parent may be entitled, at law or in equity, Parent will be entitled to seek to enforce any provision of this Agreement by a decree of specific performance and to seek temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

7. Notices. All notices and other communications hereunder shall be in writing (including email or similar writing) and must be given:

(a) If to Parent, to:

MYnd Analytics, Inc.
26522 La Alameda, Suite 290
Mission Viejo, CA 92691
Attention: Patrick Herguth
Email: pherguth@myndanalytics.com

(b) If to Stockholder, to the address set forth onSchedule I hereto.

or such other physical address or email address as a party may hereafter specify for the purpose by notice to the other parties hereto. Each notice, consent, waiver or other communication under this Agreement will be effective only (i) if given by email, when the email is transmitted to the email address specified in this Section 7 or (ii) if given by overnight courier or personal delivery when delivered at the physical address specified in this Section 7.

8. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without affecting the validity or enforceability of the remaining provisions hereof. Any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision will be interpreted to be only so broad as is enforceable.

9 . Governing Law. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto will be governed by, construed under and enforced in accordance with the laws of the State of Delaware, without giving effect to principles of conflict or choice of laws which would result in the application of the laws of any other jurisdiction.

10. Consent to Jurisdiction. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or thereby will be brought exclusively in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware, and each of the parties hereto hereby consents to the exclusive jurisdiction of those courts (and of the appropriate appellate courts therefrom) in any suit, action or proceeding and irrevocably waives, to the fullest extent permitted by applicable Law, any objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding in any of those courts or that any suit, action or proceeding which is brought in any of those courts has been brought in an inconvenient forum. Process in any suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any of the named courts. Without limiting the foregoing, each party agrees that service of process on it by notice as provided in Section 7 will be deemed effective service of process. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

11. Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by a party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in a written document signed by the other party, (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

12. Effectiveness; Termination. This Agreement shall only be effective upon the Effective Time of the Merger and shall automatically terminate in the event of the termination of the Merger Agreement for any reason or upon the consummation following the Merger of a change of control of Parent, meaning (a) the consummation of a reorganization, merger or consolidation, or sale or other disposition of all or substantially all of the assets of Parent, or (b) the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (i) the then-outstanding shares of common stock of Parent; or (ii) the combined voting power of the then-outstanding voting securities of Parent entitled to vote generally in the election of directors.

13. Further Assurances. Stockholder shall execute and/or cause to be delivered to Parent such instruments and other documents and shall take such other actions as Parent may reasonably request for the purpose of carrying out the transactions contemplated by this Agreement.

14. Entire Agreement and Modification. This Agreement, the Merger Agreement and any other documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, between the parties with respect to its subject matter and constitute (along with the documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented or otherwise modified except by a written document executed by the party against whose interest the modification will operate. The parties will not enter into any other agreement inconsistent with the terms and conditions of this Agreement and the Merger Agreement, or that addresses any of the subject matters addressed in this Agreement and the Merger Agreement.

15. Non-Exclusivity. The rights and remedies of Parent hereunder are not exclusive of or limited by any other rights or remedies which Parent may have, whether at law, in equity, by contract or otherwise, all of which shall be cumulative (and not alternative).

16. Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such expenses.

17. Assignment. This Agreement and all obligations of Stockholder hereunder are personal to Stockholder and may not be transferred or delegated by Stockholder at any time, except in accordance with Section 2(b) of this Agreement. Parent may freely assign any or all of its rights under this Agreement, in whole or in part, to any successor entity without obtaining the consent or approval of Stockholder.

18. Binding Nature. Subject to Section 17, this Agreement will inure to the benefit of Parent and its successors and assigns and will be binding upon Stockholder and Stockholder's representatives, executors, administrators, estate, heirs, successors and assigns.

19. Survival. Each of the representations, warranties, covenants and obligations contained in this Agreement shall survive the consummation of the Merger.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same instrument. An electronic copy of a party's signature (including signatures in Adobe PDF or similar format) shall be deemed an original signature for purposes hereof.

2 1 . Headings; Construction. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. In this Agreement (a) words denoting the singular include the plural and vice versa, (b) "it" or "its" or words denoting any gender include all genders and (c) the word "including" means "including without limitation," whether or not expressed.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have caused this Lock-Up Agreement to be duly executed as of the day and year first above written.

THE COMPANY

MYND ANALYTICS, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Lock-Up Agreement to be duly executed as of the day and year first above written.

STOCKHOLDER:

INDIVIDUAL:

_____
(Print Name)

_____
(Signature)

_____
(Jurisdiction of Residence)

PARTNERSHIP, CORPORATION, LLC, TRUST OR OTHER ENTITY:

_____
(Print Name of Entity)

By: _____
(Signature)

_____
(Print Name)

_____
(Print Title)

_____
(Type of Entity)

_____
(Jurisdiction of Organization)

SCHEDULE I

Name and Contact Information	Shares of Company Common Stock	Company Convertible Notes	Company Warrants	Company Options	Beneficially Owned Shares with a Right to Vote
[Name] [Address] Attention: [●] Facsimile: [●] Email: [●]					

Exhibit 10.5

FORM OF MYND LOCK-UP AGREEMENT

This LOCK-UP AGREEMENT (this "***Agreement***"), dated as of January 4, 2019, is being executed and delivered as of January 4, 2019, by [●] (***Stockholder***") in favor of and for the benefit of MYND ANALYTICS, INC. ("***Parent***").

RECITALS

A. Stockholder is a director or officer of Parent.

B. Emmaus Life Sciences, Inc., a Delaware corporation (the "***Company***"), Parent, and ATHENA MERGER SUBSIDIARY INC., a Delaware corporation and a direct wholly owned subsidiary of Parent ("***Merger Sub***"), have entered into that certain Agreement and Plan of Merger and Reorganization (as amended from time to time, the "***Merger Agreement***"), dated as of January 4, 2019, pursuant to which Merger Sub will merge with and into the Company (the "***Merger***") and the Company will continue as a direct wholly owned subsidiary of Parent.

Stockholder, intending to be legally bound, agrees as follows:

1 . Defined Terms. Each capitalized term used in this Agreement but not otherwise defined herein shall have the meaning ascribed thereto in the Merger Agreement.

2. Representations and Warranties of Stockholder. Stockholder represents and warrants to Parent as of the date hereof as follows:

(a) Stockholder is the holder and "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***")) of the number of outstanding shares of common stock of Parent (the "***Parent Shares***") set forth beneath Stockholder's signature on the signature page hereof, and Stockholder has good and valid title to the Parent Shares, free and clear of any liens, pledges, security interests, adverse claims, equities, options, proxies, charges, encumbrances or restrictions of any nature, other than as otherwise restricted under the Securities Act of 1933, as amended (the "***Securities Act***") and other applicable securities laws and regulations.

(b) Stockholder has the sole right to vote and to dispose of the Parent Shares.

(c) Stockholder has read this Agreement and, to the extent Stockholder felt necessary, has discussed with counsel the limitations imposed on Stockholder's ability to sell, transfer or otherwise dispose of the Parent Shares after the Merger. Stockholder fully understands the limitations this Agreement places upon Stockholder's ability to sell, transfer or otherwise dispose of the Parent Shares after the Merger.

(d) [Stockholder is the holder and "beneficial owner" (i) shares of Parent's Series A Preferred Stock, par value $0.001 per share (the "***Series A Preferred Stock***"), and/or shares of Parent's Series A-1 Preferred Stock, par value $0.001 per share (the "***Series A-1 Preferred Stock***") and (ii) and warrants to purchase shares of Common Stock of Parent that were purchased on March 29, 2018 (the "***2018 Warrants***").]

3. Lock-Up.

(a) Stockholder will not, during the period commencing on the date of the Effective Time of the Merger and, subject to the terms set forth herein, ending 90 days after the Effective Time of the Merger (the "***Lock-up Period***"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Parent Shares, or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Parent Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of the Parent Shares, in cash or otherwise.

(b) Notwithstanding the foregoing, Stockholder may transfer Parent Shares (i) to Affiliates (including, for the avoidance of doubt, if Stockholder is a corporation, partnership, limited liability company, investment fund, trust or other business entity, such investment funds or other business entities controlled or managed by, or that controls or manages, or under common management with, the Stockholder) or charitable organizations; (ii) if Stockholder is an individual, to any member of Stockholder's immediate family, or to a trust for the benefit of Stockholder or any member of Stockholder's immediate family for estate planning purposes or for the purposes of personal tax planning, or upon the death of Stockholder, by will or intestacy; (iii) if Stockholder is a corporation, partnership, limited liability company, investment fund or other business entity, as part of a disposition, transfer or distribution by the Stockholder to its equity holders; (iv) if the Stockholder is a trust, to a trustor or beneficiary of the trust; or (v) to a nominee or custodian of a Person or entity to whom a disposition or transfer would be permissible under this clause (b); provided, however, that any such transfer shall be permitted under this clause (b) only if, as a precondition to such transfer, such donee, transferee or distributee agrees in writing to be bound by all of the terms of this Agreement. In addition, notwithstanding the foregoing, the restrictions set forth herein shall not apply to the establishment of a trading plan that complies with Rule 10b5-1 under the Exchange Act; provided, however, that the restrictions shall apply in full force to sales pursuant to the trading plan during the Lock-Up Period.

(c) For the avoidance of doubt, the restrictions in this Agreement shall apply only to the Parent Shares owned by the Stockholder as of the Effective Time of the Merger and Parent Shares issued upon the exercise of options outstanding as of the Effective Time of the Merger and no other security of Parent or any Affiliate thereof.

4 . Stop Transfer Instructions. Stockholder acknowledges and agrees that stop transfer instructions will be given to Parent's transfer agent with respect to the Parent Shares until the expiration of the Lock-Up Period.

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

6 . Specific Performance. Stockholder acknowledges that Parent could be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by Stockholder could not be adequately compensated by monetary damages. Accordingly, Stockholder agrees that, (a) it will waive, in any action for specific performance, the defense of adequacy of a remedy at law, and (b) in addition to any other right or remedy to which Parent may be entitled, at law or in equity, Parent will be entitled to seek to enforce any provision of this Agreement by a decree of specific performance and to seek temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

7. Notices. All notices and other communications hereunder shall be in writing (including email or similar writing) and must be given:

(a) If to Parent, to:

MYnd Analytics, Inc.
26522 La Alameda, Suite 290
Mission Viejo, CA 92691
Attention: Patrick Herguth
Email: pherguth@myndanalytics.com

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

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Jeffrey Baumel
Ilan Katz
Email: jeffrey.baumel@dentons.com
ilan.katz@dentons.com

(b) If to Stockholder, to the address set forth on Schedule I hereto.

or such other physical address or email address as a party may hereafter specify for the purpose by notice to the other parties hereto. Each notice, consent, waiver or other communication under this Agreement will be effective only (i) if given by email, when the email is transmitted to the email address specified in this Section 7 or (ii) if given by overnight courier or personal delivery when delivered at the physical address specified in this Section 7.

8. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without affecting the validity or enforceability of the remaining provisions hereof. Any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision will be interpreted to be only so broad as is enforceable.

9. Governing Law. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto will be governed by, construed under and enforced in accordance with the laws of the State of Delaware, without giving effect to principles of conflict or choice of laws which would result in the application of the laws of any other jurisdiction.

10. Consent to Jurisdiction. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or thereby will be brought exclusively in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware, and each of the parties hereto hereby consents to the exclusive jurisdiction of those courts (and of the appropriate appellate courts therefrom) in any suit, action or proceeding and irrevocably waives, to the fullest extent permitted by applicable Law, any objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding in any of those courts or that any suit, action or proceeding which is brought in any of those courts has been brought in an inconvenient forum. Process in any suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any of the named courts. Without limiting the foregoing, each party agrees that service of process on it by notice as provided in Section 7 will be deemed effective service of process. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

11. Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by a party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in a written document signed by the other party, (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

12. Effectiveness; Termination. This Agreement shall only be effective upon the Effective Time of the Merger and shall automatically terminate in the event of the termination of the Merger Agreement for any reason or upon the consummation following the Merger of a change of control of Parent, meaning (a) the consummation of a reorganization, merger or consolidation, or sale or other disposition of all or substantially all of the assets of Parent, or (b) the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (i) the then-outstanding shares of common stock of Parent; or (ii) the combined voting power of the then-outstanding voting securities of Parent entitled to vote generally in the election of directors.

13. Further Assurances. Stockholder shall execute and/or cause to be delivered to Parent such instruments and other documents and shall take such other actions as Parent may reasonably request for the purpose of carrying out the transactions contemplated by this Agreement.

14. Entire Agreement and Modification. This Agreement, the Merger Agreement and any other documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, between the parties with respect to its subject matter and constitute (along with the documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented or otherwise modified except by a written document executed by the party against whose interest the modification will operate. The parties will not enter into any other agreement inconsistent with the terms and conditions of this Agreement and the Merger Agreement, or that addresses any of the subject matters addressed in this Agreement and the Merger Agreement.

15. Non-Exclusivity. The rights and remedies of Parent hereunder are not exclusive of or limited by any other rights or remedies which Parent may have, whether at law, in equity, by contract or otherwise, all of which shall be cumulative (and not alternative).

16. Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such expenses.

17. Assignment. This Agreement and all obligations of Stockholder hereunder are personal to Stockholder and may not be transferred or delegated by Stockholder at any time, except in accordance with Section 2(b) of this Agreement. Parent may freely assign any or all of its rights under this Agreement, in whole or in part, to any successor entity without obtaining the consent or approval of Stockholder.

18. Binding Nature. Subject to Section 17, this Agreement will inure to the benefit of Parent and its successors and assigns and will be binding upon Stockholder and Stockholder's representatives, executors, administrators, estate, heirs, successors and assigns.

19. Survival. Each of the representations, warranties, covenants and obligations contained in this Agreement shall survive the consummation of the Mergers.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same instrument. An electronic copy of a party's signature (including signatures in Adobe PDF or similar format) shall be deemed an original signature for purposes hereof.

2 1 . Headings; Construction. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. In this Agreement (a) words denoting the singular include the plural and vice versa, (b) "it" or "its" or words denoting any gender include all genders and (c) the word "including" means "including without limitation," whether or not expressed.

22. [Conversion of Parent Preferred Stock. Stockholder hereby agrees that all shares of Series A Preferred Stock and/or shares of Series A-1 Preferred Stock held by such Stockholder shall automatically, and without any further action by the Stockholder, convert into Parent Shares, immediately prior to, and contingent upon the occurrence of, the Effective Time, in accordance with, and pursuant to the terms of, Section 5 of the Certificate of Designation, Preferences and Rights of Series A Preferred Stock or Section 5 of the Certificate of Designation, Preferences and Rights of Series A-1 Preferred Stock, as applicable. In exchange for Stockholder agreeing to convert its shares of Series A Preferred Stock and/or shares of Series A1 Preferred Stock, Parent hereby agrees, in connection with the Spinoff, to cause the Parent California Subsidiary to issue to Stockholder (in addition to any other equity of Parent California Subsidiary that Stockholder might be entitled to receive on other Parent securities owned by Stockholder) newly issues shares of preferred stock of the Parent California Subsidiary (instead of shares of common stock of the Parent California Subsidiary) that will have substantially the same rights and preferences as the shares of Series A Preferred Stock (the ***"California Preferred Shares***"). The California Preferred Shares will represent a percentage of the fully-diluted common stock of the Parent California Subsidiary that is equal to the percentage of the outstanding preferred stock and common stock of Parent represented by all shares of Series A Preferred Stock and/or shares of Series A-1 Preferred Stock held by such Stockholder prior to the conversion provided for herein. In addition, Parent will take all actions reasonably necessary to permit the Stockholder to exchange their 2018 Warrants into warrants to purchase shares of common stock of the Parent California Subsidiary prior to the Effective Time using the same exchange ratio utilized for the issuance of the California Preferred Shares and with the same exercise price as applicable to the 2018 Warrants (as adjusted for the exchange ratio utilized for the issuance of the California Preferred Shares).]

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have caused this Lock-Up Agreement to be duly executed as of the day and year first above written.

THE COMPANY

MYND ANALYTICS, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Lock-Up Agreement to be duly executed as of the day and year first above written.

STOCKHOLDER:

INDIVIDUAL:

(Print Name)

(Signature)

(Jurisdiction of Residence)

PARTNERSHIP, CORPORATION, LLC, TRUST OR OTHER ENTITY:

(Print Name of Entity)

By:

(Signature)

(Print Name)

(Print Title)

(Type of Entity)

(Jurisdiction of Organization)

SCHEDULE I

Name and Contact Information	Shares of Parent Common Stock	Shares of Parent Preferred Stock	Parent Warrants	Parent Options	Beneficially Owned Shares with a Right to Vote
[Name] [Address] Attention: [●] Facsimile: [●] Email: [●]					

Exhibit 99.1

MYnd Analytics and Emmaus Life Sciences Announce
Merger and Spin-off Transaction

Emmaus' commercial lead product Endari™ (L-glutamine oral powder) is FDA approved to reduce the acute complications of sickle cell disease

Endari addresses a $3 billion worldwide market

Mission Viejo and Torrance CA, January 7, 2019 - MYnd Analytics, Inc. (Nasdaq: MYND) a predictive analytics company aimed at improving the delivery of mental health services through the combination of telemedicine and data analytics, today announced that it has entered into a definitive stock-for-stock merger agreement with **Emmaus Life Sciences, Inc. ("Emmaus"),** a leader in sickle cell disease treatment. Pursuant to the merger agreement, Emmaus will become a wholly owned subsidiary of MYnd Analytics in exchange for MYnd Analytics' issuance of common stock to Emmaus shareholders and other equity holders. The exchange ratio will result in Emmaus securityholders owning approximately 94% of the MYnd Analytics' common stock on a fully diluted basis after the merger. It is anticipated that the surviving company will change its name to Emmaus and receive a new ticker symbol to reflect the name change. The company expects to meet all applicable requirements for initial listing upon completion of the merger and, therefore, expects to continue to be listed on The Nasdaq Capital Market. The completion of the merger is subject to customary closing conditions, including receipt of approval from the shareholders of each company and Nasdaq approval. A.G.P./Alliance Global Partners is acting as a financial advisor to Emmaus in connection with this transaction.

In connection with the transaction, MYnd Analytics intends to transfer all of its assets (including cash and its equity interest in Arcadian Telepsychiatry Services, LLC) and liabilities into its wholly-owned subsidiary, MYnd Analytics California, and to distribute the shares of MYnd Analytics California to MYnd Analytics' shareholders as of a record date prior to the merger, which will be set prior to the merger effective time. MYnd Analytics expects that the MYnd Analytics California subsidiary, following the spinoff, will commence trading as an independent company at a date to be announced. Under the leadership of its new CEO, Patrick Herguth, the MYnd Analytics California spin off intends to continue operating, integrating and growing its technology-enabled telepsychiatry and teletherapy businesses in order to provide enhanced access to behavioral health services, improve patient outcomes and help lower the costs associated with behavioral health issues. MYnd-Arcadian customers include major health plans, health systems, and community-based organizations. The parties do not expect there to be any disruption to the existing business or customers.

Emmaus is a commercial stage biopharmaceutical company engaged in the discovery, development, marketing and sale of innovative treatments and therapies, including those in the rare and orphan disease categories. Its lead prescription product, Endari, demonstrated positive clinical results in a completed Phase 3 clinical trial for sickle cell disease and received FDA approval in July 2017. Endari is indicated to reduce the acute complications of sickle cell disease in adult and pediatric patients five years of age and older. The results of the trial were published in The New England Journal of Medicine on July 19th, 2018.

Emmaus launched Endari in the United States in early 2018 and has experienced strong market uptake. Endari is reimbursable by the Centers for Medicare and Medicaid Services, and every state provides coverage for Endari for outpatient prescriptions to all eligible Medicaid enrollees within their state Medicaid programs. Additionally, Emmaus has distribution agreements in place with the nation's leading distributors, making Endari available to selected pharmacies nationwide.

Outside the United States, the treatment is currently available through an Early Access Program for sickle cell disease patients that have exhausted other treatment options. Emmaus is currently in the process of seeking marketing approval by the European Medicines Agency for its medication. Emmaus has received Orphan Drug designation from the FDA which provides protection from competition in the United States and Orphan Medicinal designation from the European Commission for protection in the European Union.

Yutaka Niihara, MD, MPH, CEO and Chairman of Emmaus, stated, "The merger with MYnd Analytics, and concurrent Nasdaq listing, will be a major milestone for the company, and builds on our recent progress, including the FDA approval of Endari, the publication of our Phase 3 results in The New England Journal of Medicine, Medicaid coverage, the addition of major pharmaceutical distributors, and a presentation at the American Society of Hematology (ASH) 2018 Annual Meeting. Just as important as these accomplishments was the launch and market acceptance of Endari – the first medication (FDA approved) for sickle cell disease in almost 20 years. Endari addresses a $3 billion global market. In addition to the treatment of sickle cell disease, we believe our platform technology has the potential to address other clinical indications such as diverticulosis. Through this merger, we believe we can maximize value for shareholders and we are grateful to MYnd for this opportunity."

Robin Smith, Chairman of MYnd Analytics, commented, "We are excited to announce this definitive merger agreement with Emmaus, whereby the MYnd shareholders will own equity in Emmaus, and upon our expected spin-off, will continue to own 100% of the predictive analytics and telemedicine business, which we expect to begin operations as a new standalone public company. We are quite encouraged by the outlook for the business and look forward to further integrating and accelerating the growth of our offerings under Patrick Herguth's leadership. We plan to provide further details on the new operational direction, branding, and growth strategy in the coming weeks and months."

About Sickle Cell Disease

Sickle Cell Disease is an inherited blood disorder characterized by the production of an altered form of hemoglobin which polymerizes and becomes fibrous, causing red blood cells to become rigid and change form so that they appear sickle shaped instead of soft and rounded. Patients with Sickle Cell Disease suffer from debilitating episodes of sickle cell crises, which occur when the rigid, adhesive and inflexible red blood cells occlude blood vessels. Sickle cell crises cause excruciating pain as a result of insufficient oxygen being delivered to tissue, referred to as tissue ischemia, and inflammation. These events may lead to organ damage, stroke, pulmonary complications, skin ulceration, infection and a variety of other adverse outcomes. Sickle Cell Disease is an orphan disease with significant unmet medical needs, affecting approximately one hundred thousand patients in the U.S. and millions worldwide.

About Endari

Indication
Endari is indicated to reduce the acute complications of sickle cell disease in adult and pediatric patients 5 years of age and older.

Important Safety Information
The most common adverse reactions in clinical studies include constipation, nausea, headache, and abdominal pain.

Adverse reactions leading to treatment discontinuation included one case each of hypersplenism, abdominal pain, dyspepsia, burning sensation, and hot flash.

The safety and efficacy of Endari in pediatric patients with sickle cell disease younger than five years of age has not been established.

For more information, please see full Prescribing Information of Endari at: www.ENDARIrx.com/PI

About Emmaus Life Sciences

Emmaus Life Sciences, Inc. is a commercial stage biopharmaceutical company engaged in the discovery, development, marketing and sale of innovative treatments and therapies, including those in the rare and orphan disease categories. Its lead prescription product, Endari, demonstrated positive clinical results in a completed Phase 3 clinical trial for sickle cell disease and received FDA approval in July 2017. The company's research on sickle cell disease was initiated by Yutaka Niihara, MD, MPH, Chairman and CEO of Emmaus, at the Los Angeles Biomedical Research Institute at Harbor-UCLA Medical Center. For more information, please visit www.emmauslifesciences.com.

About MYnd Analytics

MYnd Analytics, Inc. (www.myndanalytics.com), with its wholly owned subsidiary Arcadian Telepsychiatry Services, LLC, is a technology-enabled telepsychiatry and teletherapy company that provides enhanced access to behavioral health services, improves patient outcomes and helps lower the costs associated with behavioral health issues. The MYnd Psychiatric EEG Evaluation Registry (PEER) is a predictive analytics decision support tool that helps physicians reduce trial and error treatment for behavioral health conditions. PEER provides the physician a personalized care plan with recommended treatment options based on a patient's unique brain markers, reducing treatment time and treatment costs. Arcadian Telepsychiatry Services, LLC provides a suite of complementary telemedicine services that can be combined with PEER, including telepsychiatry, teletherapy, digital patient screening, curbside consultation, on-demand services, and scheduled encounters for all age groups. MYnd's customers include major health plans, health systems, and community-based organizations. To read more about the benefits of this patented technology for patients, physicians and payers, please visit: www.myndanalytics.com.

About A.G.P./Alliance Global Partners

A.G.P./Alliance Global Partners is a national investment firm whose broker dealer affiliation has been a member of FINRA and registered with the SEC for the past 37 years. A.G.P. has full service capabilities with a global ability to trade domestically as well as internationally. A.G.P. prides itself on providing its clients with boutique services along with the comfort of knowing their accounts are custodied at Fidelity Clearing. Whether a client is looking for wealth management advice, Institutional services or investment banking and corporate advice, A.G.P. has a track record and a proven team to assist.

How to Find It

This release is being made in respect of the proposed business combination involving MYnd Analytics, Inc. and Emmaus Life Sciences, Inc. In connection with the proposed transactions, MYnd and Emmaus plan to file documents with the U.S. Securities and Exchange Commission (the "SEC"), including the filing by MYnd of a Registration Statement on Form S-4 containing a Joint Proxy Statement/Prospectus and each of MYnd and Emmaus plan to file with the SEC other documents regarding the proposed transactions. INVESTORS AND SECURITY HOLDERS OF MYND AND EMMAUS ARE URGED TO CAREFULLY READ THE JOINT PROXY STATEMENT/PROSPECTUS (WHEN AVAILABLE) AND OTHER DOCUMENTS FILED WITH THE SEC BY MYND AND EMMAUS BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTIONS. Investors and security holders may obtain free copies of these documents (when they are available) and other documents filed with the SEC at the SEC's web site at www.sec.gov and by contacting MYnd Investor Relations or Emmaus Investor Relations.

MYnd, Emmaus and their respective directors and executive officers may be deemed participants in the solicitation of proxies with respect to the proposed transaction. Information regarding the interests of these directors and executive officers in the proposed transaction will be included in the Joint Proxy Statement/Prospectus described above. Additional information regarding the directors and executive officers of MYnd is also included in MYnd's proxy statement for its 2018 Annual Meeting of Shareholders, which was filed with the SEC on March 1, 2018, as updated in MYnd's Annual Report on Form 10-K for the fiscal year ended September 30, 2018, and additional information regarding the directors and executive officers of Emmaus is also included in Emmaus' proxy statement for its 2018 Annual Meeting of Stockholders, which was filed with the SEC on August 23, 2018.

No Offer or Solicitation

This document does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Forward-looking Statements

Certain statements in this release, including statements relating to the Merger Agreement, the Merger and the other transactions contemplated by the Merger Agreement and the combined company's future financial condition performance and operating results, strategy and plans are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 giving MYnd's and Emmaus' expectations or predictions of future financial or business performance or conditions. These forward-looking statements are subject to numerous assumptions, risks and uncertainties which change over time. Forward-looking statements speak only as of the date they are made and MYnd and Emmaus assume no duty to update forward-looking statements. In addition to factors previously disclosed in MYnd's and Emmaus' reports filed with the U.S. Securities and Exchange Commission (the "SEC") and those identified elsewhere in this release, the following factors, among others, could cause actual results to differ materially from forward-looking statements and historical performance: the ability to obtain *NasdaqCM listing approval and meet other closing conditions to the Merger, including requisite approval by MYnd's and Emmaus' stockholders on a timely basis or at all; delay in closing the Merger; the ability to effect the proposed spin-off; adverse tax consequences; disruption following the Merger; the availability and access, in general, of funds to fund operations and necessary capital expenditures. Other risks and uncertainties are more fully described in MYnd's Annual Report on Form 10-K for the fiscal year ended September 30, 2018, and Emmaus' Annual Report on Form 10-K for the year ended December 31, 2017, each filed with the SEC, and in other filings that MYnd or Emmaus makes and will make with the SEC in connection with the proposed transactions, including the Joint Proxy Statement/Prospectus described herein under "Important Additional Information About the Transaction Will be Filed with the SEC." Existing and prospective investors are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The statements made in this release speak only as of the date stated herein, and subsequent events and developments may cause MYnd's or Emmaus' expectations and beliefs to change. While MYnd or Emmaus may elect to update these forward-looking statements publicly at some point in the future, each of MYnd and Emmaus specifically disclaims any obligation to do so, whether as a result of new information, future events or otherwise, except as required by law. These forward-looking statements should not be relied upon as representing MYnd's or Emmaus' views as of any date after the date stated herein.*

Contact:

For MYND:
Crescendo Communications, LLC
Tel: +1 (212) 671-1020
Email: mynd@crescendo-ir.com

For Emmaus:
Kurt Kruger
CFO, Emmaus Life Sciences, Inc.
Email: kkruger@emmauslifesciences.com

Exhibit 99.2

UNAUDITED PRO FORMA COMBINED BALANCE SHEET INFORMATION

The following unaudited pro forma combined Balance Sheet information combines the consolidated historical Balance Sheet of MYnd Analytics, Inc., a Delaware corporation ("MYnd") and the consolidated historical Balance Sheet of Emmaus Life Sciences, Inc., a Delaware corporation ("Emmaus") as of September 30, 2018, following the completion of a proposed reverse merger transaction (the "Reverse Merger"), in which Athena Merger Sub, Inc., ("Merger Sub") a Delaware corporation that was newly-created as a wholly-owned subsidiary of MYnd (the "Company") merged with and into Emmaus, and Emmaus remained as the surviving corporation of the Reverse Merger, becoming a wholly-owned subsidiary of the Company. Subject to the terms of the Merger Agreement, at the effective time of the Merger, Emmaus stockholders will receive a number of newly issued shares of MYnd common stock determined using the exchange ratio described previously in exchange for their shares of Emmaus stock. Following the Reverse Merger, stockholders of Emmaus will become the majority owners of MYnd. The combined company, led by Emmaus' management team, is expected to be named "Emmaus Life Sciences, Inc." Prior to the closing of the Reverse Merger, MYnd will seek shareholder approval to conduct a reverse split of its outstanding shares to satisfy listing requirements of the Nasdaq Capital Market (the "NasdaqCM"). The pro forma combined Balance Sheet presented herein reflects the effects of the Reverse Merger and exchange of shares (collectively the "Transactions") as if they had been consummated on September 30, 2018.

The following unaudited pro forma combined Balance Sheet information is presented to illustrate the estimated effects of the Transactions. The unaudited pro forma combined Balance Sheet was prepared using the historical financial statements of MYnd Analytics, Inc. and Emmaus Life Sciences, Inc, as of September 30, 2018.

The historical financial information has been adjusted to give effect to pro forma events that are directly attributable to the Transactions and factually supportable.

The following information should be read in conjunction with the pro forma combined Balance Sheet information.

- Accompanying notes to the unaudited pro forma combined Balance Sheet information,
- Separate historical financial statements of MYnd Analytics Inc. for the year ended September 30, 2018 as filed in its annual report on Form 10-K with the Securities and Exchange Commission, and
- Separate historical financial statements of Emmaus Life Sciences, Inc. for the three and nine months ended September 30, 2018 as filed in its quarterly report on Form 10-Q with the Securities and Exchange Commission including the Income Statements and footnotes thereto.

The unaudited pro forma combined Balance Sheet information is presented for informational purposes only. The pro forma information is not necessarily indicative of what the financial position actually would have been had the Transactions been completed at the dates indicated. In addition, the unaudited pro forma combined Balance Sheet information does not purport to project the future financial position or operating results of the combined company.

The unaudited pro forma combined Balance Sheet was prepared using the reverse acquisition application of the acquisition method of accounting as described in ASC 805-40-05-2, with Emmaus treated as the acquiror for U.S. GAAP accounting and financial reporting purposes. Accordingly, the unaudited pro forma combined Balance Sheet is presented as a continuation of Emmaus financial statements with an adjustment to reflect the issued equity capital of the former MYnd Analytics, Inc., the legal parent.

The information contained herein is preliminary and is subject to change as the parties to the Reverse Merger seek to satisfy the condition to closing of the Reverse Merger.

Investors should be aware that the Reverse Merger may not close, that the terms may change, that the spin-off of the MYnd subsidiary may not be completed as planned and that other changes may occur prior to the Closing thereof (if any).

UNAUDITED PRO FORMA COMBINED BALANCE SHEET OF EMMAUS LIFE SCIENCES, INC.
SEPTEMBER 30, 2018

	Historical				
Assets	Emmaus	Mynd	Pro Forma Adjustments	Notes	Emmaus Combined
Current Assets					
Cash and cash equivalents	$ 16,662,211	$ 3,254,700	$ (3,254,700)	(6)	$ 16,662,211
Accounts receivable, net	1,415,208	63,300	(63,300)	(6)	1,415,208
Inventories, net	3,347,229	—			3,347,229
Investment in marketable securities	61,585,792	—			61,585,792
Marketable securities, pledged to creditor	345,510	—			345,510
Prepaid expenses and other current assets	319,143	192,600	(192,600)	(6)	319,143
Total current assets	83,675,093	3,510,600	(3,510,600)		83,675,093
Property and equipment, net	152,490	110,800	(110,800)	(6)	152,490
Intangible assets	—	116,500	(116,500)	(6)	—
Goodwill	—	1,386,800	28,910,000	(4)	28,910,000
			(1,386,800)	(6)	
Other noncurrent assets	977,990	27,100	(27,100)	(6)	977,990
Total Assets	$ 84,805,573	$ 5,151,800	$ 23,758,200		$ 113,715,573
Liabilities and Stockholders' Equity					
Current Liabilities					
Accounts payable and accrued expenses	$ 7,542,026	$ 1,004,400	$ (1,004,400)	(6)	$ 7,542,026
Deferred revenue	—	159,700	(159,700)	(6)	—
Deferred rent	13,915	—			13,915
Notes payable, net	4,384,241	—			4,384,241
Notes payable to related parties, net	1,344,973	—			1,344,973
Convertible notes payable, net	14,137,645	—	(12,723,881)	(3)	1,413,765
Convertible notes payable to related parties, net	400,000	—	(360,000)	(3)	40,000
Other current liabilities	2,138,562	1,300	(1,300)	(6)	2,138,562
Total current liabilities	29,961,362	1,165,400	(14,249,281)		16,877,482
LONG-TERM LIABILITIES					
Deferred rent	273,150	—			273,150
Other long-term liabilities	39,531,500	112,200	(112,200)	(6)	39,531,500
Warrant derivative liabilities	1,722,000	—			1,722,000
Notes payable, net	6,670,000	587,700	(587,700)	(6)	6,670,000
Convertible notes payable, net	5,258,462	—	(4,732,616)	(3)	525,846
Convertible notes payable to related parties, net	12,934,388	—	(11,640,949)	(3)	1,293,439
Total Liabilities	96,350,862	1,865,300	(31,322,746)		66,893,417
STOCKHOLDERS' EQUITY					
Preferred stock — par value $0.001 per share, 20,000,000 shares authorized, none issued and outstanding	—	1,100	(1,100)	(1)	—
Common stock — par value $0.001 per share, 100,000,000 shares authorized, 35,952,805 shares issued and outstanding at September 30, 2018	35,953	7,400	1,100	(1)	38,074
			2,121	(2)	
			(8,500)	(5)	
Additional paid-in capital	126,137,862	89,257,700	29,457,446	(3)	184,503,187
			(2,121)	(2)	
			8,500	(5)	
			28,910,000	(4)	
			(85,979,700)	(5)	
			(3,286,500)	(6)	
Accumulated other comprehensive income (loss)	(75,428)	—			(75,428)
Accumulated deficit	(137,643,676)	(85,245,300)	85,245,300	(5)	(137,643,676)
Non-controlling interest	—	(734,400)	734,400	(5)	—
Total stockholders' equity (deficit)	(11,545,289)	3,286,500	55,080,946		46,822,157
Total liabilities & stockholders' equity	$ 84,805,573	$ 5,151,800	$ 23,758,200		$ 113,715,573

NOTES TO UNAUDITED PRO FORMA
COMBINED BALANCE SHEET INFORMATION

Description of Transaction and Basis of Presentation

On January 4, 2019, MYnd entered into a Definitive Merger Agreement relating to a proposed reverse merger transaction pursuant to an agreement and plan of merger, in which Merger Sub, a Delaware corporation that was newly-created as a wholly-owned subsidiary of Mynd, will merge with and into Emmaus, and Emmaus will remain as the surviving corporation of the Reverse Merger, becoming a wholly-owned subsidiary of Mynd. As a result, the historical financial statements of Emmaus would constitute the historical financial statements of the merged companies.

Pro Forma Adjustments

There were no inter-company balances and transactions between MYnd and Emmaus as of the dates and for the periods of these pro forma combined financial statements.

The pro forma adjustments included in the unaudited pro forma combined Balance Sheet is as follows:

1) To record the conversion of MYnd preferred stock into common stock concurrent with the Reverse Merger.

2) To record the issuance of 94.1% of MYnd fully diluted shares in exchange for 100% of Emmaus Life Sciences, Inc. shares.

3) To record the conversion of 90% of the convertible debt held by Emmaus concurrent with the Reverse Merger which amount is subject to change and which amount has been proposed by Emmaus, but is not assured and is subject to change.

4) To record goodwill associated with the fair value of the shares received by the MYnd shareholders.

5) To eliminate the equity accounts of MYnd outstanding concurrent with the Reverse Merger.

6) To eliminate the asset and liabilities of MYnd outstanding concurrent with the Reverse Merger. The spin-off is subject to various conditions outside the control of MYnd and may not be completed in its entirety, if at all.