
**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 and Exchange Act of 1934**

**Date of Report: July 31, 2017
(Date of earliest event reported)**

Invitae Corporation
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

001-36847
(Commission
File Number)

27-1701898
(I.R.S. employer
identification number)

1400 16th Street, San Francisco, California 94103
(Address of principal executive offices, including zip code)

(415) 374-7782
(Registrant's telephone number, including area code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-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.**Private Placement**

On July 31, 2017, Invitae Corporation (the “Company”) entered into a Securities Purchase Agreement (the “Purchase Agreement”) with certain accredited investors (the “Investors”) pursuant to which the Company, in a private placement, agreed to issue and sell to the Investors an aggregate of 5,188,235 shares of the Company’s common stock, \$0.0001 par value per share (the “Common Stock”) at a price of \$8.50 per share and 3,458,823 shares of the Company’s Series A Convertible Preferred Stock, \$0.0001 par value per share (the “Series A Preferred Stock”) at a price of \$8.50 per share, for gross proceeds to the Company of approximately \$73.5 million (the “Private Placement”). The Series A Preferred Stock, which is a Common Stock equivalent but non-voting and with a blocker on conversion if the holder would exceed a specified threshold of voting security ownership, is convertible into Common Stock on a one-for-one basis, subject to adjustment for events such as stock splits, combinations and the like as provided in the Purchase Agreement. The Private Placement is expected to close on or about August 3, 2017, subject to the satisfaction of customary closing conditions.

In connection with the Private Placement, the Company entered into a Registration Rights Agreement with the Investors, dated as of July 31, 2017 (the “Registration Rights Agreement”), pursuant to which the Company has agreed to file one or more registration statements with the Securities and Exchange Commission (the “SEC”) covering the resale of the shares of Common Stock, and Common Stock underlying the Series A Preferred Stock, sold in the Private Placement, as well as other shares of Common Stock previously held by certain investors participating in the Private Placement. The Company has agreed to file the registration statements within 60 days of the closing of the Private Placement. The Registration Rights Agreement includes customary indemnification rights in connection with the registration statements.

The foregoing summary descriptions of the Purchase Agreement and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the Purchase Agreement and the Registration Rights Agreement, which are attached as Exhibits 10.1 and 10.2 hereto, respectively, and incorporated herein by reference.

The representations, warranties and covenants contained in the Purchase Agreement and the Registration Rights Agreement were made solely for the benefit of the parties to the Purchase Agreement and the Registration Rights Agreement and may be subject to limitations agreed upon by the contracting parties. Accordingly, the Purchase Agreement and the Registration Rights Agreement are incorporated herein by reference only to provide investors with information regarding the terms of the Purchase Agreement and the Registration Rights Agreement and not to provide investors with any other factual information regarding the Company or its business, and should be read in conjunction with the disclosures in the Company’s periodic reports and other filings with the SEC.

Amendment to Registration Rights Agreement

In connection with the Private Placement, on July 31, 2017, the Company entered into an amendment (the “Amendment”) to that certain Fifth Amended and Restated Investors’ Rights Agreement dated as of August 26, 2014 (the “Original Rights Agreement”) by and among the Company and the other signatories thereto. The Amendment provides that a Holder’s (as defined in the Original Rights Agreement) rights with respect to registration of Registrable Securities (as defined in the Original Rights Agreement) expire at such time as Rule 144 or another similar exemption under the Securities Act of 1933 (the “Securities Act”) is available for the sale of all of such Holder’s shares without limitation during a three-month period. As required under the Original Rights Agreement, the Amendment was entered into by the Company and the holders of at least a majority of the Registrable Securities currently outstanding (as defined in the Original Rights Agreement).

The foregoing summary description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, which is attached as Exhibit 10.3 hereto and incorporated herein by reference.

Amended and Restated Registration Rights Agreement

In connection with the Private Placement, on July 31, 2017, the Company entered into an Amended and Restated Registration Rights Agreement (the “Amended and Restated Agreement”) which supersedes the Original Rights Agreement, as amended. The Amended and Restated Agreement provides that Holders (as defined in the Amended and Restated Agreement) holding Registrable Securities (as defined in the Amended and Restated Agreement), particularly those who would otherwise be prohibited from selling shares of Common Stock due to certain restrictions under federal securities laws (including, for example, due to status as an affiliate of the Company) shall be entitled to request registration of such shares on a registration statement on Form S-3 under certain circumstances as more fully described in the Amended and Restated Agreement. As required under the Original Agreement, the Amended and Restated Agreement was entered into by the Company and the holders of at least a majority of the Registrable Securities currently outstanding (as defined in the Original Agreement and following the effectiveness of the Amendment).

The foregoing summary description of the Amended and Restated Agreement does not purport to be complete and is qualified in its entirety by reference to the Amended and Restated Agreement, a copy of which is attached as Exhibit 10.4 hereto and incorporated herein by reference.

CombiMatrix Acquisition

On July 31, 2017, the Company, Coronado Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of the Company (“Coronado Merger Sub”), and CombiMatrix Corporation (NASDAQ: CBMX), a Delaware corporation (“CombiMatrix”), entered into an Agreement and Plan of Merger and Reorganization (the “CombiMatrix Merger Agreement”), pursuant to which, among other things, subject to the satisfaction or waiver of the conditions set forth in the CombiMatrix Merger Agreement, the Company will acquire 100% of the fully diluted equity of CombiMatrix. Pursuant to the CombiMatrix Merger Agreement, Coronado Merger Sub will merge with and into CombiMatrix, with CombiMatrix becoming a wholly-owned subsidiary of the Company and the surviving corporation in the merger (the “CombiMatrix Merger”). The CombiMatrix Merger is intended to qualify for federal income tax purposes as a tax-free reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”).

The aggregate merger-related consideration in the CombiMatrix Merger for 100% of the currently issued and outstanding shares of CombiMatrix as well as outstanding restricted stock units and in-the-money options consists of \$27.0 million in shares of the Company’s common stock, based upon the 30 trading day trailing average closing price for shares of the Company’s common stock immediately preceding the date of the CombiMatrix Merger Agreement (the “Stipulated Value”), or approximately 2.85 million shares; provided, however, that such amount is subject to adjustment based upon the “Net Cash” of CombiMatrix at the time of the CombiMatrix Merger as defined in the CombiMatrix Merger Agreement. Subject to the terms and conditions of the CombiMatrix Merger Agreement, at the closing of the CombiMatrix Merger, (i) each outstanding share of CombiMatrix common stock or Series F preferred stock will be converted into the right to receive the number of shares of the Company’s common stock equal to the Exchange Ratio (as defined in the CombiMatrix Merger Agreement), (ii) outstanding and unexercised in-the-money CombiMatrix stock options will be accelerated and converted into the right to receive the number of shares of the Company’s common stock equal to the Exchange Ratio, and (iii) outstanding and unsettled CombiMatrix RSUs will be accelerated and settled with the number of shares of the Company’s common stock equal to the Exchange Ratio. No fractional shares will be issued in connection with the CombiMatrix Merger and the Company will pay cash in lieu of any such fractional shares.

In addition, (a) outstanding and unexercised out-of-the money CombiMatrix stock options will be cancelled and extinguished at the closing of the CombiMatrix Merger without any right to receive any consideration, (b) outstanding and unexercised CombiMatrix Series D Warrants, and outstanding and unexercised and untendered CombiMatrix Series F Warrants (NASDAQ: CBMXW) immediately prior to the closing of the CombiMatrix Merger, will be assumed by the Company and converted into warrants to purchase that number of shares of the Company’s common stock equal to the Exchange Ratio and (c) certain entitlements under CombiMatrix’s executive compensation transaction bonus plan will be paid in shares of the Company’s common stock or RSUs to be settled in shares of the Company’s common stock. All outstanding and unexercised CombiMatrix Series A, Series B, Series C, Series E, and PIPE warrants will be repurchased by CombiMatrix prior to closing pursuant to that certain CombiMatrix Common Stock Purchase Warrants Repurchase Agreement dated July 11, 2016.

As part of the CombiMatrix Merger transaction and pursuant to the Merger Agreement, the Company contemplates conducting a warrant exchange offer to the holders of outstanding CombiMatrix Series F Warrants to exchange such warrants (the “Warrant Exchange Offer”) for up to approximately \$6.0 million in shares of the Company’s common stock based upon the Stipulated Value, or approximately 0.63 million shares. The specific terms of the Warrant Exchange Offer have not yet been determined by the Company.

To the extent the CombiMatrix Series F warrants are not exchanged in the Warrant Exchange Offer and are either exercised or assumed as part of the CombiMatrix Merger, the consideration payable by the Company could increase by up to approximately \$15 million in shares of the Company’s common stock based upon the Stipulated Value, or approximately 1.58 million shares; provided, however, that such amount is subject to adjustment based upon the Net Cash of CombiMatrix at the time of the CombiMatrix Merger.

Consummation of the CombiMatrix Merger is subject to certain closing conditions, including, among other things, approval by the stockholders of CombiMatrix at a special meeting of stockholders to be called by CombiMatrix as well a minimum required participation in the Warrant Exchange Offer by the holders of at least 90% of the outstanding CombiMatrix Series F warrants. The CombiMatrix Merger Agreement contains specified termination rights for both the Company and CombiMatrix, and further provides that, upon termination of the Merger Agreement under specified circumstances, CombiMatrix may be obligated to pay the Company a termination fee of \$1,400,000 (net of expense reimbursement previously paid), and, under specified circumstances, either party may be required to reimburse the other party for various expenses incurred in connection with the Merger up to a maximum of \$400,000.

In accordance with the terms of the Merger Agreement, certain CombiMatrix officers and directors have each entered into a Transaction Bonus Payout Agreement with CombiMatrix and the Company (the “CombiMatrix Transaction Bonus Payout Agreements”). Pursuant to the Transaction Bonus Payout Agreements, (i) the two CombiMatrix executive officers and another officer who are each party to such an agreement have agreed to receive any cash bonus to which they may otherwise be entitled under the CombiMatrix Transaction Bonus Plan in RSUs to be granted by the Company and settled in shares of the Company’s common stock and (ii) the CombiMatrix outside directors who are each party to such an agreement have agreed to receive any cash bonus to which they may otherwise be entitled under the CombiMatrix Transaction Bonus Plan in unrestricted shares of the Company’s common stock.

The preceding summary does not purport to be complete and is qualified in its entirety by reference to the CombiMatrix Merger Agreement which is filed as Exhibit 2.1 to this Current Report on Form 8-K and incorporated herein by reference.

Additional Information about the CombiMatrix Merger and Where to Find It

In connection with the CombiMatrix Merger, the Company and CombiMatrix intend to file relevant materials with the SEC, including (a) a registration statement on Form S-4 that will contain a proxy statement/prospectus for CombiMatrix to solicit stockholder approval of the CombiMatrix Merger and (b) a registration statement on Form S-4 that will contain offer documents for the Company to conduct the Warrant Exchange Offer. Investors and securityholders of the Company and CombiMatrix are urged to read these materials when they become available because they will contain important information about the Company and CombiMatrix as well as the CombiMatrix Merger and the Warrant Exchange Offer. The proxy statement/prospectus and the offering documents and other relevant materials (when they become available), and any other documents filed by the Company or CombiMatrix with the SEC, may be obtained free of charge at the SEC web site at www.sec.gov. In addition, investors and securityholders may obtain free copies of the documents (i) filed with the SEC by the Company, by directing a written request to: Invitae Corporation, 1400 16th Street, San Francisco, California 94103, Attention: Investor Relations or (ii) filed with the SEC by CombiMatrix, by directing a written request to: CombiMatrix Corporation, 310 Goddard, Suite 150, Irvine, California 92618, Attention: Investor Relations. Investors and securityholders are urged to read the proxy statement/prospectus, the offering documents and the other relevant materials when they become available before making any voting or investment decision with respect to the CombiMatrix Merger or the Warrant Exchange Offer.

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 offering of securities in connection with the Merger shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Participants in the Solicitation

The Company and CombiMatrix and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of CombiMatrix in connection with the CombiMatrix Merger. Information regarding the special interests of these directors and executive officers in the CombiMatrix Merger will be included in the proxy statement/prospectus referred to above. Additional information regarding the Company's directors and executive officers is also included in the Company's Annual Report on Form 10-K for the year ended December 31, 2016 and the proxy statement for the Company's 2017 annual meeting of stockholders. Additional information regarding CombiMatrix's directors and executive officers is also included in CombiMatrix's Annual Report on Form 10-K for the year ended December 31, 2016 and the proxy statement for CombiMatrix's 2017 annual meeting of stockholders. These documents are available free of charge at the SEC's web site (www.sec.gov) and from Investor Relations at the Company or CombiMatrix at the addresses set forth above.

Good Start Genetics Acquisition

On July 31, 2017, the Company, Bueno Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of the Company ("Bueno Merger Sub"), Good Start Genetics, Inc., a privately-held Delaware corporation ("Good Start"), holders of Good Start's convertible promissory notes (the "Good Start Noteholders"), participants in Good Start's management carveout plan (the "Good Start Plan Participants"), and OrbiMed Private Investments III, LP (as representative of the Good Start Noteholders, the Good Start Plan Participants and Good Start's stockholders) entered into an Agreement and Plan of Merger (the "Good Start Merger Agreement"), pursuant to which, among other things, subject to the satisfaction or waiver of the conditions set forth in the Good Start Merger Agreement, the Company will acquire 100% of the fully diluted equity of Good Start. Pursuant to the Good Start Merger Agreement, Bueno Merger Sub will merge with and into Good Start, with Good Start becoming a wholly-owned subsidiary of the Company and the surviving corporation in the merger (the "Good Start Merger").

The aggregate merger-related consideration in the Good Start Merger is expected to consist of approximately \$40 million, including (i) approximately \$15.7 million in shares of the Company's common stock issuable to certain Good Start Noteholders and Good Start Plan Participants, or approximately 1.65 million shares based upon the 30 trading day trailing average closing price for shares of the Company's common stock immediately preceding the date of the Good Start Merger Agreement, subject to a hold back of approximately 25% of such amount for up to 13 months to cover potential indemnification liabilities, (ii) cash of up to approximately \$18.3 million, which will be paid to retire certain Good Start secured debt, and (iii) the payment or assumption of approximately \$6 million in pre-closing and closing-related liabilities and obligations of Good Start.

Subject to the terms and conditions of the Good Start Merger Agreement, at the closing of the Good Start Merger, (i) each outstanding share of Good Start common stock (after conversion of all outstanding Good Stock preferred stock into common stock) will be converted into the right to receive \$0.0001 cash per share of Good Start common stock (which, in the aggregate, will be a negligible amount), (ii) outstanding and unexercised Good Start stock options will be cancelled and extinguished without any right to receive any consideration, (iii) outstanding and unexercised Good Start warrants to purchase Good Start Series A preferred stock or Good Start Series B preferred stock will be terminated without any right to receive any consideration, and (iv) pursuant to certain note termination agreements, certain Good Start convertible promissory notes will be terminated in consideration for issuance of shares of the Company's common stock as described above to the Good Start Noteholders.

In accordance with the terms of the Merger Agreement, Good Start stockholders owning the substantial majority of (i) the Good Start common stock (after giving effect to conversion of all preferred stock) and (ii) the Good Start preferred stock have entered into a support agreement with the Company (the "Support Agreement"). The Support Agreement places certain restrictions on the transfer of the shares of capital stock of Good Start held by the respective signatories and include covenants as to the voting of such shares in favor of the transactions contemplated by the Good Start Merger Agreement.

Consummation of the Good Start Merger is subject to certain closing conditions, including among other things, approval by the stockholders of Good Start.

The shares of the Company's common stock issued in the Good Start Merger will be issued in reliance upon the exemption from registration afforded by Section 4(a)(2) of the Securities Act. Each Good Start Noteholder and Good Start Plan Participant made certain representations as to such Good Start Noteholder or Good Start Plan Participant and that shares of the Company would be acquired for such Good Start Noteholder's or Good Start Plan Participant's own account for investment purposes only and not with a view to, or for sale in connection with, any distribution thereof, and that such Good Start Noteholder or Good Start Plan Participant could bear the risks of the investment and could hold the shares for an indefinite period of time.

The foregoing description of the Good Start Merger Agreement does not purport to be complete and is qualified in its entirety by reference to a copy of the Good Start Merger Agreement attached hereto as Exhibit 2.2 and which is incorporated herein by reference.

The CombiMatrix Merger Agreement and the Good Start Merger Agreement have been included to provide investors and security holders with information regarding their terms. They are not intended to provide any other factual information about the Company, CombiMatrix or Good Start. The Agreements contain representations and warranties by the Company and CombiMatrix, on the one hand, and the Company and Good Start, on the other hand, and are made solely for the benefit of the respective parties thereto. The assertions embodied in those representations and warranties are qualified by information in confidential disclosure schedules delivered by the parties to each other in connection with the signing of the CombiMatrix Merger Agreement and the Good Start Merger Agreement. Certain representations and warranties in those agreements were made as of a specified date, may be subject to a contractual standard of materiality different from what might be viewed as material to investors, or may have been used for the purpose of allocating risk between the parties thereto. Accordingly, the representations and warranties in the CombiMatrix Merger Agreement or the Good Start Merger Agreement should not be relied on by any persons as characterizations of the actual state of facts at the time they were made or otherwise. In addition, information concerning the subject matter of the representations and warranties may change after the date of the respective agreements, which subsequent information may or may not be fully reflected in the Company's public disclosures.

Item 2.02 Results of Operations and Financial Condition.

On July 31, 2017, the Company issued a press release announcing certain preliminary financial results for the second fiscal quarter ended June 30, 2017. The preliminary financial results contained in the press release are furnished as Exhibit 99.1.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information required to be disclosed under this Item 2.03 is set forth in Item 1.01 above under the caption "Good Start Genetics Acquisition" and is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

Pursuant to the Private Placement described in Item 1.01 above, which description under the caption "Private Placement" is hereby incorporated by reference into this Item 3.02, the Company has agreed to sell the shares of Common Stock and Series A Preferred Stock to be issued in the Private Placement to accredited investors in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and Regulation D promulgated thereunder. The Company will rely on this exemption from registration based in part on representations made by the Investors. Cowen and Company, LLC and Leerink Partners LLC are acting as joint placement agents for the Company in connection with the Private Placement and will receive fees of approximately \$4.4 million. The net proceeds to the Company from the Private Placement, after deducting the placement agent fees and other expenses payable by the Company, are expected to be approximately \$68.8 million. The securities to be sold in the Private Placement have not been registered under the Securities Act or applicable state securities laws and may not be offered or sold in the United States absent registration under the Securities Act or an exemption from such registration requirements. Neither this Current Report on Form 8-K nor any exhibit attached hereto shall constitute an offer to sell or the solicitation of an offer to buy shares of Common Stock, the Series A Preferred Stock or any other securities of the Company.

Pursuant to the Good Start Merger described in Item 1.01 above under the caption “ ***Good Start Genetics Acquisition***, ” the Company will issue certain shares of its common stock upon closing of the Good Start Merger in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act. Each Good Start Noteholder and Good Start Plan Participant made certain representations as to such Good Start Noteholder or Good Start Plan Participant and that the shares would be acquired for such Good Start Noteholder’s or Good Start Plan Participant’s own account for investment purposes only and not with a view to, or for sale in connection with, any distribution thereof, and that such Good Start Noteholder or Good Start Plan Participant could bear the risks of the investment and could hold the shares for an indefinite period of time.

Item 3.03 Material Modification to Rights of Security Holders.

In connection with the Private Placement, on July 31, 2017, the Company filed a Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock (the “Certificate of Designation”) with the Secretary of State of the State of Delaware, establishing and designating the rights, powers and preferences of the Series A Preferred Stock. The Company designated up to 3,458,823 shares of Series A Preferred Stock \$0.0001 par value per share and a stated value per share equal to \$8.50 (the “Stated Value”). Each share of Series A Preferred Stock is convertible at any time at the option of the holder thereof into a number of shares of the Company’s Common Stock determined by dividing the Stated Value by the conversion price per share, as it may be adjusted from time to time pursuant to the terms of the Certificate of Designation, which shall initially be \$8.50, subject to a blocker provision on conversion if the holder would exceed a specified threshold of voting security ownership (which percentage may subsequently be increased or decreased to any other percentage at the holder’s election). The Series A Preferred Stock will have the right to receive dividends, first or simultaneously with payment of dividends to common stock, in an amount equal to the product of (i) the dividend payable on each share of common stock and (ii) the number of shares of common stock issuable upon conversion of a share of Series A Preferred Stock. The Series A Preferred Stock will have no voting rights except as required by law, as modified by the Company’s Amended and Restated Certificate of Incorporation. In the event of any liquidation or dissolution of the Company, the Series A Preferred Stock is entitled to receive \$0.001 per share prior to the payment of any amount to any holders of capital stock of the Company ranking junior to the Series A Preferred Stock and thereafter shall participate *pari passu* with the holders of the Company’s common stock (on an as-if-converted-to-common-stock basis).

The foregoing summary description of the Certificate of Designation does not purport to be complete and is qualified in its entirety by reference to the Certificate of Designation, which is attached as Exhibit 3.1 hereto and incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws: Change in Fiscal Year.

The information required to be disclosed under this Item 5.03 is set forth in Item 3.03 above and is incorporated by reference into this Item 5.03.

Item 7.01 Regulation FD Disclosure.

On July 31, 2017, the Company issued a press release announcing the Private Placement and a press release announcing the CombiMatrix Merger and the Good Start Merger. A copy of the press releases are furnished as Exhibits 99.1 and 99.2, respectively.

Forward-Looking Statements

Certain statements either contained in or incorporated by reference into this document, other than purely historical information, are “forward-looking statements.” All statements, other than statements of historical facts, included in or incorporated by reference into this document regarding strategy, future operations, future financial position, future revenue, projected expenses, prospects, plans and objectives of management are forward-looking

statements. Examples of such statements include, but are not limited to, statements relating to the structure, timing, stockholder approval and/or completion of the proposed mergers; the Company's intention to file with the SEC registration statements on Form S-4 for the CombiMatrix Merger and the Warrant Exchange Offer; the Company's intention to conduct the Warrant Exchange Offer; and the expected timing for closing the Private Placement. The Company may not actually achieve the plans, carry out the intentions or meet the expectations or projections disclosed in the forward-looking statements and you should not place undue reliance on these forward-looking statements. Such statements are based on management's current expectations and involve risks and uncertainties. Actual results and performance could differ materially from those projected in the forward-looking statements as a result of many factors, including, without limitation, risks and uncertainties associated with stockholder approval of and the ability to consummate the proposed CombiMatrix Merger and the proposed Good Start Merger, the ability of the Company to conduct the Warrant Exchange Offer, and the participation by CombiMatrix Series F warrant holders of the 90% minimum participation. The Company disclaims any intent or obligation to update these forward-looking statements to reflect events or circumstances that exist after the date on which they were made.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Reference is made to the Exhibit Index included with this Current Report on Form 8-K.

SIGNATURE

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

Dated: July 31, 2017

INVITAE CORPORATION

By: /s/ Shelly D. Guyer

Name: Shelly D. Guyer

Title: Chief Financial Officer

EXHIBIT INDEX

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 2.1* | Agreement and Plan of Merger and Reorganization, dated as of July 31, 2017, by and among Invitae Corporation, Coronado Merger Sub, Inc. and CombiMatrix Corporation. |
| 2.2* | Agreement and Plan of Merger, dated as of July 31, 2017, by and among Invitae Corporation, Bueno Merger Sub, Inc., Good Start Genetics, Inc., the Noteholders, the Management Carveout Plan Participants, and OrbiMed Private Investments III, LP as the Holders' Representative. |
| 3.1 | Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock of Invitae Corporation. |
| 10.1 | Securities Purchase Agreement, dated as of July 31, 2017. |
| 10.2 | Registration Rights Agreement, dated as of July 31, 2017. |
| 10.3 | Amendment to Registration Rights Agreement, dated as of July 31, 2017. |
| 10.4 | Amended and Restated Registration Rights Agreement, dated as of July 31, 2017. |
| 99.1# | Press Release issued by Invitae Corporation, dated July 31, 2017, announcing the Private Placement. |
| 99.2# | Press Release issued by Invitae Corporation, dated July 31, 2017, announcing the CombiMatrix Merger and the Good Start Merger. |
| # | This Exhibit is furnished herewith and will not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 (the "Exchange Act") or deemed to be incorporated by reference into any filing under the Exchange Act or the Securities Act of 1933 except to the extent that Invitae Corporation specifically incorporates it by reference. |
| * | The schedules and exhibits to this agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the SEC upon request. |

AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

THIS AGREEMENT AND PLAN OF MERGER AND REORGANIZATION (this “*Agreement*”) is made and entered into as of July 31, 2017, by and among INVITAE CORPORATION, a Delaware corporation (“*Invitae*”), CORONADO MERGER SUB, INC., a Delaware corporation (“*Merger Sub*”), and COMBIMATRIX CORPORATION, a Delaware corporation (“*CombiMatrix*”). Certain capitalized terms used in this Agreement are defined in Exhibit A.

RECITALS

A. *Invitae* and *CombiMatrix* intend to effect a merger of *Merger Sub* into *CombiMatrix* (the “*Merger*”) in accordance with this Agreement and the DGCL. Upon consummation of the Merger, *Merger Sub* will cease to exist, and *CombiMatrix* will become a wholly-owned subsidiary of *Invitae*.

B. The Parties intend, by approving resolutions authorizing this Agreement, to adopt this Agreement as a plan of reorganization within the meaning of Section 368(a) of the Code, and to cause the Merger, together with the Warrant Exchange Offer, to qualify as a reorganization under the provisions of Section 368(a) of the Code and the Treasury Regulations promulgated thereunder.

C. The *Invitae* Board of Directors has approved this Agreement, the Merger, the issuance of shares of *Invitae* Common Stock to the stockholders of *CombiMatrix* pursuant to the terms of this Agreement and the other actions contemplated by this Agreement, including the Warrant Exchange Offer (consummation of which, with at least the Minimum Warrant Exchange Participation, is one of the conditions to the obligations of *Invitae* and *Merger Sub* to proceed with the Merger as set forth herein).

D. The *Merger Sub* Board of Directors has determined that the Merger is in the best interests of *Merger Sub* and its sole stockholder and has approved this Agreement, the Merger, and the other actions contemplated by this Agreement.

E. The *CombiMatrix* Board of Directors (i) has determined that the Merger is advisable and fair to, and in the best interests of, *CombiMatrix* and its stockholders, (ii) has deemed advisable and approved this Agreement, the Merger and the other actions contemplated by this Agreement, and (iii) has determined to recommend that the stockholders of *CombiMatrix* vote to adopt this Agreement and thereby approve the Merger and such other actions as contemplated by this Agreement (the “*Merger Proposal*”).

AGREEMENT

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

Section 1. DESCRIPTION OF TRANSACTION

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 *CombiMatrix*, and the separate existence of *Merger Sub* shall cease. *CombiMatrix* will continue as the surviving corporation in the Merger (the “*Surviving Corporation*”).

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. As a result of the Merger, CombiMatrix will become a wholly-owned subsidiary of Invitae.

1.3 Closing; Effective Time . Unless this Agreement is earlier terminated pursuant to the provisions of Section 9.1, and subject to the satisfaction or waiver of the conditions set forth in Section 6, Section 7 and Section 8, the consummation of the Merger (the “**Closing**”) shall take place at the offices of Pillsbury Winthrop Shaw Pittman LLP, 12255 El Camino Real, Suite 300, San Diego, California, as promptly as practicable (but in no event later than the second (2nd) Business Day following the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Section 6, Section 7 and Section 8, other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of each of such conditions), or at such other time, date and place as Invitae and CombiMatrix 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 with respect to the Merger, satisfying the applicable requirements of the DGCL and in a form reasonably acceptable to Invitae and CombiMatrix (the “**Certificate of Merger**”). The Merger shall become effective at the time of the filing of such Certificate of Merger with the Secretary of State of the State of Delaware or at such later time as may be specified in such Certificate of Merger with the consent of Invitae and CombiMatrix (the time as of which the Merger becomes effective being referred to as the “**Effective Time**”).

1.4 Certificate of Incorporation and Bylaws; Directors and Officers . At the Effective Time:

(a) the Certificate of Incorporation of the Surviving Corporation shall be amended and restated in its entirety to read identically to the Certificate of Incorporation of Merger Sub as in effect immediately prior to the Effective Time, (i) except that references to the name of Merger Sub shall be replaced with references to the name of the Surviving Corporation and (ii) until thereafter amended as provided by the DGCL and such Certificate of Incorporation;

(b) the Bylaws of the Surviving Corporation shall be amended and restated in their entirety to read identically to the Bylaws of Merger Sub as in effect immediately prior to the Effective Time, (i) except that references to the name of Merger Sub shall be replaced with references to the name of the Surviving Corporation and (ii) until thereafter amended as provided by the DGCL and such Bylaws; and

(c) the directors and officers of Merger Sub immediately prior to the Effective Time shall be the directors and officer of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation.

1.5 Conversion of CombiMatrix Common Stock, CombiMatrix RSUs, CombiMatrix Options and CombiMatrix Series F Preferred Stock; Issuance of Warrants .

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

(i) any shares of CombiMatrix Common Stock or CombiMatrix Preferred Stock held as treasury stock or held or owned by CombiMatrix, Merger Sub or any Subsidiary of CombiMatrix immediately prior to the Effective Time shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor; and

(ii) subject to Section 1.5(c):

(1) each share of CombiMatrix Series F Preferred Stock outstanding immediately prior to the Effective Time (excluding shares to be canceled pursuant to Section 1.5(a)(i)) shall be converted solely into the right to receive a number of shares of Invitae Common Stock equal to the product of (A) the Exchange Ratio multiplied by (B) the number of shares of CombiMatrix Common Stock underlying a share of outstanding CombiMatrix Series F Preferred Stock on the date immediately prior to the Effective Time;

(2) each share of CombiMatrix Common Stock outstanding immediately prior to the Effective Time (excluding shares to be canceled pursuant to Section 1.5(a)(i)) shall be converted solely into the right to receive a number of shares of Invitae Common Stock equal to the Exchange Ratio;

(3) subject to the payment of such amounts as are required to be deducted or withheld from such consideration under the Code or under any other applicable Legal Requirement as well as the delivery of any reasonably appropriate Tax forms, including Form W-9 (or the appropriate Form W-8, as applicable), each CombiMatrix RSU outstanding immediately prior to the Effective Time shall be fully accelerated to the extent of any vesting period applicable thereto and converted into the number of shares of Invitae Common Stock determined by multiplying (A) the number of shares of CombiMatrix Common Stock that were subject to such CombiMatrix RSU, as in effect immediately prior to the Effective Time, by (B) the Exchange Ratio and rounding the resulting number down to the nearest whole number of shares of Invitae Common Stock; and

(4) subject to the payment of such amounts as are required to be deducted or withheld from such consideration under the Code or under any other applicable Legal Requirement as well as the delivery of any reasonably appropriate Tax forms, including Form W-9 (or the appropriate Form W-8, as applicable), each in-the-money CombiMatrix Option that is outstanding and unexercised immediately prior to the Effective Time, whether or not vested or exercisable, shall be converted into the number of shares of Invitae Common Stock determined by (A) multiplying the Exchange Ratio by the number of shares of CombiMatrix Common Stock underlying such CombiMatrix Option, and subtracting therefrom (B) the number of shares of Invitae Common Stock determined by dividing (x) the exercise price payable by the holder with respect to all shares underlying such CombiMatrix Option by (y) the Invitae Trailing Average Share Value, and rounding the resulting number down to the nearest whole number of shares of Invitae Common Stock.

The shares of Invitae Common Stock issuable pursuant to this Section 1.5(a)(ii) are herein referred to as the “*Merger Consideration* .”

(b) If any shares of CombiMatrix Common Stock, CombiMatrix RSUs or CombiMatrix Options outstanding immediately prior to the Effective Time are unvested or are subject to a repurchase option or the risk of forfeiture under any applicable restricted stock purchase agreement or other agreement with CombiMatrix, then (i) the shares of Invitae Common Stock issued in exchange for such shares of CombiMatrix Common Stock shall be issued without regard to such vesting, restrictions, repurchase options or risk of forfeiture, which shall lapse as of the Effective Time and (ii) the shares of Invitae Common Stock issued upon conversion of such CombiMatrix RSUs or CombiMatrix Options, subject to and as provided in Sections 1.5(a)(ii)(3) and 1.5(a)(ii)(4), shall be issued without any vesting period, restrictions, repurchase options or risk of forfeiture.

(c) No fractional shares of Invitae 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 CombiMatrix Common Stock, CombiMatrix RSUs or CombiMatrix Options who would otherwise be entitled to receive a fraction of a share of Invitae Common Stock (after aggregating all fractional shares of Invitae 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 Invitae Trailing Average Share Value.

(d) Prior to the Effective Time, CombiMatrix shall take or cause to be taken any and all actions reasonably necessary to cause all CombiMatrix RSUs outstanding immediately prior to the Effective Time under the 2006 Plan or otherwise to become immediately fully vested as of the Effective Time and converted into the number of shares of unrestricted Invitae Common Stock calculated pursuant to Section 1.5(a)(ii)(3). In accordance with Section 5.4(a), CombiMatrix shall further take or cause to be taken any and all actions reasonably necessary to (i) cause all in-the-money CombiMatrix Options outstanding and unexercised immediately prior to the Effective Time, whether or not vested or exercisable, to become immediately vested as of the Effective Time and converted into the number of shares of unrestricted Invitae Common Stock calculated pursuant to Section 1.5(a)(ii)(4) and (ii) cause all out-of-the-money CombiMatrix Options outstanding and unexercised immediately prior to the Effective Time, whether or not vested or exercisable, to be cancelled and terminated as of the Effective Time for no consideration.

(e) All CombiMatrix Series D Warrants and CombiMatrix Series F Warrants outstanding as of the Effective Time (*i.e.*, to the extent not exchanged in the Warrant Exchange Offer, in the instance of CombiMatrix Series F Warrants, or exercised for cash prior to consummation of the Warrant Exchange Offer) shall be assumed by Invitae and converted into warrants to purchase Invitae Common Stock in accordance with Section 5.4(c). For the avoidance of doubt, all other CombiMatrix Warrants shall be repurchased by CombiMatrix pursuant to the CombiMatrix Warrant Repurchase.

(f) Each share of Common Stock, \$0.001 par value per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock, \$0.001 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.

(g) If, between the date of this Agreement and the Effective Time, the outstanding shares of CombiMatrix Capital Stock or Invitae Common Stock shall have been changed into, or exchanged for, a different number of shares or a different class, by reason of any stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares, the Exchange Ratio shall be correspondingly adjusted to provide holders of shares of CombiMatrix Capital Stock, or securities convertible into or exchangeable into or exercisable for such CombiMatrix Capital Stock, the same economic effect as contemplated by this Agreement prior to such event.

1.6 Calculation of Net Cash

(a) For the purposes of this Agreement, the “**Determination Date**” shall be the date that is ten (10) calendar days prior to the anticipated date for Closing, as agreed upon by Invitae and CombiMatrix at least ten (10) calendar days prior to the CombiMatrix Stockholders’ Meeting or, if later, at least ten (10) calendar days prior to the anticipated end of the period for the Warrant Exchange Offer (the “**Anticipated Closing Date**”). Within five (5) calendar days following the Determination Date, CombiMatrix shall deliver to Invitae a schedule (the “**Net Cash Schedule**”) setting forth, in reasonable detail, CombiMatrix’s good faith, estimated calculation of Net Cash (using estimates where applicable) as of the Anticipated Closing Date (the “**Net Cash Calculation**”) prepared and certified by CombiMatrix’s Chief Financial Officer; provided, however, that, for purposes of such calculation of Net Cash, current assets, current liabilities not triggered by the Closing, and long-term capital lease obligations may be calculated (i) as of the last day of the month prior to the Anticipated Closing Date if the Anticipated Closing Date occurs between the 15th and the 31st of the month or (ii) as of the last day of the month prior to the month preceding the Anticipated Closing Date if the Anticipated Closing Date occurs between the 1st and the 14th of the month, in both cases if, to the extent applicable, a mid-month calculation for such liabilities and assets (or, in the case of the foregoing clause (ii), calculation as of the most recent month-end) would be impractical. CombiMatrix shall make the work papers and back-up materials used or useful in preparing the Net Cash Schedule, as reasonably requested by Invitae, available to Invitae and, if requested by Invitae, its accountants and counsel at reasonable times and upon reasonable notice.

(b) Within three (3) calendar days after CombiMatrix delivers the Net Cash Schedule (the “**Response Date**”), Invitae shall have the right to dispute any part of such Net Cash Schedule by delivering a written notice to that effect to CombiMatrix (a “**Dispute Notice**”). Any Dispute Notice shall identify in reasonable detail the nature of any proposed revisions to the Net Cash Calculation.

(c) If on or prior to the Response Date, (i) Invitae notifies CombiMatrix in writing that it has no objections to the Net Cash Calculation or (ii) Invitae fails to deliver a Dispute Notice as provided in Section 1.6(b), then the Net Cash Calculation as set forth in the Net Cash Schedule shall be deemed to have been finally determined for purposes of this Agreement.

(d) If Invitae delivers a Dispute Notice on or prior to the Response Date, then Representatives of CombiMatrix and Invitae shall promptly meet and attempt in good faith to resolve the disputed item(s) and negotiate an agreed-upon determination of Net Cash, which agreed upon Net Cash amount shall be deemed to have been finally determined for purposes of this Agreement.

(e) If Representatives of Invitae and CombiMatrix are unable to negotiate an agreed-upon determination of Net Cash pursuant to Section 1.6(d) within three (3) calendar days after delivery of the Dispute Notice (or such other period as Invitae and CombiMatrix may mutually agree upon), then Invitae and CombiMatrix shall jointly select an independent auditor of recognized national standing (the “ **Accounting Firm** ”) to resolve any remaining disagreements as to the Net Cash Calculation. If Invitae and CombiMatrix are unable to mutually select the Accounting Firm, then Invitae and CombiMatrix shall each select an independent auditor of recognized national standing and those two selected firms shall jointly select a third independent auditor of recognized national standing, which shall serve as the Accounting Firm. CombiMatrix shall promptly deliver to the Accounting Firm the work papers and back-up materials used in preparing the Net Cash Schedule, and Invitae and CombiMatrix shall use commercially reasonable efforts to cause the Accounting Firm to make its determination within ten (10) calendar days of accepting its selection. CombiMatrix and Invitae shall be afforded the opportunity to present to the Accounting Firm any material related to the unresolved disputes and to discuss the issues with the Accounting Firm; *provided, however*, that no such presentation or discussion shall occur without the presence of a Representative of each of CombiMatrix and Invitae. The determination of the Accounting Firm shall be limited to the disagreements submitted to the Accounting Firm. The determination of the amount of Net Cash made by the Accounting Firm shall be deemed to have been finally determined for purposes of this Agreement and to represent the Net Cash for purposes of this Agreement, and the Parties shall delay the Closing until the resolution of the matters described in this Section 1.6(e). The fees and expenses of the Accounting Firm shall be allocated between Invitae and CombiMatrix in the same proportion that the disputed amount of the Net Cash that was unsuccessfully disputed by such Party (as finally determined by the Accounting Firm) bears to the total disputed amount of the Net Cash amount (and for the avoidance of doubt the fees and expenses to be paid by CombiMatrix shall reduce the Net Cash). If this Section 1.6(e) applies as to the determination of the Net Cash, upon resolution of the matter in accordance with this Section 1.6(e), the Parties shall not be required to determine Net Cash again even though the Closing Date may occur later than the Anticipated Closing Date, except that either Party may request a redetermination of Net Cash if the Closing Date is more than five (5) Business Days after the Anticipated Closing Date.

1.7 Closing of CombiMatrix ’ s Transfer Books . At the Effective Time: (a) all shares of CombiMatrix Capital Stock outstanding immediately prior to the Effective Time shall be treated in accordance with Section 1.5(a), and all holders of certificates representing shares of CombiMatrix Capital Stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as stockholders of CombiMatrix; and (b) the stock transfer books of CombiMatrix shall be closed with respect to all shares of CombiMatrix Capital Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of CombiMatrix

Capital 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 CombiMatrix Capital Stock immediately prior to the Effective Time (an “**CombiMatrix Stock Certificate**”) is presented to the Exchange Agent or to the Surviving Corporation, such CombiMatrix Stock Certificate shall be canceled and shall be exchanged as provided in Sections 1.5 or 1.8.

1.8 Surrender of Certificates

(a) On or prior to the Closing Date, Invitae and CombiMatrix shall agree upon and select a reputable bank, transfer agent or trust company to act as exchange agent in the Merger (the “**Exchange Agent**”). At the Effective Time, Invitae shall deposit with the Exchange Agent: (i) the aggregate number of book-entry shares representing the Merger Consideration issuable to CombiMatrix stockholders pursuant to Section 1.5(a) and (ii) cash sufficient to make payments in lieu of fractional shares in accordance with Section 1.5(c). The book-entry shares of Invitae Common Stock and cash amounts so deposited with the Exchange Agent, together with any dividends or distributions received by the Exchange Agent with respect to such shares, are referred to collectively as the “**Exchange Fund**.”

(b) At or before the Effective Time, CombiMatrix will deliver to Invitae a true, complete and accurate listing of all record holders of CombiMatrix Capital Stock at the Effective Time, including the number and class of shares of CombiMatrix Capital Stock held by such record holder, and the number of shares of Invitae Common Stock such record holder is entitled to receive pursuant to Section 1.5. Promptly after the Effective Time, the Parties shall cause the Exchange Agent to mail to the Persons who were record holders of CombiMatrix Stock Certificates immediately prior to the Effective Time: (i) a letter of transmittal in customary form and containing such provisions as Invitae may reasonably specify (including a provision confirming that delivery of CombiMatrix Stock Certificates shall be effected, and risk of loss and title to CombiMatrix Stock Certificates shall pass, only upon delivery of such CombiMatrix Stock Certificates to the Exchange Agent); and (ii) instructions for effecting the surrender of CombiMatrix Stock Certificates in exchange for certificates representing Invitae Common Stock. Upon surrender of a CombiMatrix Stock Certificate to the Exchange Agent for exchange, together with a duly executed letter of transmittal and such other documents as may be reasonably required by the Exchange Agent or Invitae: (A) the holder of such CombiMatrix Stock Certificate shall be entitled to receive in exchange therefor a certificate representing the number of whole shares of Invitae Common Stock that such holder has the right to receive pursuant to the provisions of Section 1.5(a) (and cash in lieu of any fractional share of Invitae Common Stock pursuant to the provisions of Section 1.5(c)); and (B) the CombiMatrix Stock Certificate so surrendered shall be canceled. Until surrendered as contemplated by this Section 1.8(b), each CombiMatrix Stock Certificate shall be deemed, from and after the Effective Time, to represent only the right to receive shares of Invitae Common Stock (and cash in lieu of any fractional share of Invitae Common Stock). If any CombiMatrix Stock Certificate shall have been lost, stolen or destroyed, Invitae may, in its discretion and as a condition precedent to the delivery of any shares of Invitae Common Stock, require the owner of such lost, stolen or destroyed CombiMatrix Stock Certificate to provide an applicable affidavit with respect to such CombiMatrix Stock Certificate and post a bond indemnifying Invitae against any claim suffered by Invitae related to the lost, stolen or destroyed CombiMatrix Stock Certificate or any Invitae Common Stock issued in exchange therefor as Invitae may reasonably request.

(c) No dividends or other distributions declared or made with respect to Invitae Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered CombiMatrix Stock Certificate with respect to the shares of Invitae Common Stock that such holder has the right to receive in the Merger until such holder surrenders such CombiMatrix Stock Certificate or an affidavit of loss or destruction in lieu thereof in accordance with this [Section 1.8](#) (at which time such holder shall be entitled, subject to the effect of applicable abandoned property, escheat or similar laws, to receive all such dividends and distributions, without interest).

(d) Any portion of the Exchange Fund that remains undistributed to holders of CombiMatrix Stock Certificates as of the date 180 days after the Closing Date shall be delivered to Invitae upon demand, and any holders of CombiMatrix Stock Certificates who have not theretofore surrendered their CombiMatrix Stock Certificates in accordance with this [Section 1.8](#) shall thereafter look only to Invitae for satisfaction of their claims for Invitae Common Stock, cash in lieu of fractional shares of Invitae Common Stock and any dividends or distributions with respect to shares of Invitae Common Stock.

(e) Each of the Exchange Agent, Invitae and the Surviving Corporation shall be entitled to deduct and withhold from any consideration deliverable pursuant to this Agreement such amounts as are required to be deducted or withheld from such consideration under the Code or under any other applicable Legal Requirement and shall be entitled to request any reasonably appropriate Tax forms, including Form W-9 (or the appropriate Form W-8, as applicable), from any recipient of payments hereunder. To the extent such amounts are so deducted or withheld, and remitted to the appropriate taxing authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

(f) No Party shall be liable to any holder of any CombiMatrix Stock Certificate or to any other Person with respect to any shares of Invitae Common Stock (or dividends or distributions with respect thereto) or for any cash amounts delivered to any public official pursuant to any applicable abandoned property law, escheat law or similar Legal Requirement.

1.9 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 CombiMatrix, then the officers and directors of the Surviving Corporation shall be fully authorized, and shall use their commercially reasonable efforts (in the name of CombiMatrix, in the name of Merger Sub and otherwise) to take such action.

1.10 Tax Consequences . For federal income tax purposes, the Merger, together with the Warrant Exchange Offer, is intended to constitute a reorganization within the meaning of Section 368(a) of the Code and the Treasury Regulations promulgated thereunder. The Parties adopt this Agreement as a “plan of reorganization” within the meaning of Section 1.368-2(g) of the Treasury Regulations.

Section 2. REPRESENTATIONS AND WARRANTIES OF COMBIMATRIX

CombiMatrix represents and warrants to Invitae and Merger Sub as follows, except as set forth in the written disclosure schedule delivered by CombiMatrix to Invitae (the “**CombiMatrix Disclosure Schedule**”). The CombiMatrix Disclosure Schedule shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Section 2. The disclosures in any section or subsection of the CombiMatrix Disclosure Schedule shall qualify other sections and subsections in this Section 2 to the extent it is reasonably clear from a reading of the disclosure that such disclosure is applicable to such other sections and subsections. The inclusion of any information in the CombiMatrix Disclosure Schedule (or any update thereto) shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would result in a CombiMatrix Material Adverse Effect, or is outside the Ordinary Course of Business. For the purposes of this Agreement, any references to documents delivered or made available to Invitae shall be deemed satisfied by Invitae’s access to the two data rooms created for the Contemplated Transactions.

2.1 Subsidiaries; Due Organization; Etc .

(a) CombiMatrix has no Subsidiaries, except for the Entities identified in Section 2.1(a) of the CombiMatrix Disclosure Schedule; and neither CombiMatrix nor any of the other Entities identified in Section 2.1(a) of the CombiMatrix Disclosure Schedule owns any capital stock of, or any equity interest of any nature in, any other Entity, other than the Entities identified in Section 2.1(a) of the CombiMatrix Disclosure Schedule. CombiMatrix has not agreed nor is obligated to make, nor is bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity. CombiMatrix has not, at any time, been a general partner of, or has otherwise been liable for any of the debts or other obligations of, any general partnership, limited partnership or other Entity.

(b) Each of CombiMatrix and the CombiMatrix Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all necessary power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its assets in the manner in which its assets are currently owned and used; and (iii) to perform its obligations under all Contracts by which it is bound.

(c) Each of CombiMatrix and the CombiMatrix Subsidiaries is qualified to do business as a foreign corporation, and is in good standing, under the laws of all jurisdictions where the nature of its business requires such qualification other than in jurisdictions where the failure to be so qualified individually or in the aggregate would not be reasonably expected to have a CombiMatrix Material Adverse Effect.

2.2 Certificate of Incorporation; Bylaws; Charters and Codes of Conduct . CombiMatrix has delivered to Invitae accurate and complete copies of the certificate of incorporation, bylaws and other charter and organizational documents, including all currently effective amendments thereto, for CombiMatrix and each CombiMatrix Subsidiary. Section 2.2 of the CombiMatrix Disclosure Schedule lists, and CombiMatrix has delivered to Invitae, accurate

and complete copies of: (a) the charters of all committees of CombiMatrix's board of directors; and (b) any code of conduct or similar policy adopted by CombiMatrix or by the board of directors, or any committee of the board of directors, of CombiMatrix. Neither CombiMatrix nor any CombiMatrix Subsidiary has taken any action in breach or violation in any respect of any of the provisions of its certificate of incorporation, bylaws and other charter and organizational documents nor is in breach or violation in any respect of any of the provisions of its certificate of incorporation, bylaws and other charter and organizational documents.

2.3 Capitalization, Etc .

(a) The authorized capital stock of CombiMatrix as of the date of this Agreement consists of (i) 50,000,000 shares of CombiMatrix Common Stock, par value \$0.001 per share, of which 2,918,726 shares have been issued and are outstanding as of the date of this Agreement, and (ii) 5,000,000 shares of convertible preferred stock, par value \$0.001 per share (the “*CombiMatrix Preferred Stock*”), of which (A) 4,000 shares have been designated Series A Preferred Stock, none of which shares of Series A Preferred Stock are outstanding as of the date of this Agreement, (B) 2,000 shares have been designated Series B Preferred Stock, none of which shares of Series B Preferred Stock are outstanding as of the date of this Agreement, (C) 2,500 shares have been designated Series C Preferred Stock, none of which shares of Series C Preferred Stock are outstanding as of the date of this Agreement, (D) 12,000 shares have been designated Series D Preferred Stock, none of which shares of Series D Preferred Stock are outstanding as of the date of this Agreement, (E) 2,202 shares have been designated Series E Preferred Stock, none of which shares of Series E Preferred Stock are outstanding as of the date of this Agreement, and (F) 8,000 shares have been designated Series F Preferred Stock (the “*CombiMatrix Series F Preferred Stock*”), 92 shares of which are issued and outstanding as of the date of this Agreement. Each share of CombiMatrix Series F Preferred Stock is convertible into the number of shares of CombiMatrix Common Stock equal to 1,000 divided by the conversion price of \$3.87. CombiMatrix does not hold any shares of its capital stock in its treasury. All of the outstanding shares of CombiMatrix Common Stock and CombiMatrix Preferred Stock have been duly authorized and validly issued, and are fully paid and nonassessable. As of the date of this Agreement, there are outstanding (i) CombiMatrix Series A Warrants to purchase an aggregate of 11,252 shares of CombiMatrix Common Stock at an exercise price of \$29.55 per share, (ii) CombiMatrix Series A Warrants to purchase an aggregate of 1,690 shares of CombiMatrix Common Stock at an exercise price of \$30.90 per share, (iii) CombiMatrix Series B Warrants to purchase an aggregate of 18,334 shares of CombiMatrix Common Stock at an exercise price of \$29.55 per share, (iv) CombiMatrix Series C Warrants to purchase an aggregate of 65,576 shares of CombiMatrix Common Stock at an exercise price of \$29.55 per share, (v) CombiMatrix Series D Warrants to purchase an aggregate of 388,365 shares of CombiMatrix Common Stock at an exercise price of \$46.80 per share, (vi) CombiMatrix Series E Warrants to purchase an aggregate of 46,676 shares of CombiMatrix Common Stock at an exercise price of \$16.50 per share, (vii) CombiMatrix PIPE Warrants to purchase an aggregate of 100,847 shares of CombiMatrix Common Stock at an exercise price of \$16.50 per share, (viii) CombiMatrix PIPE Warrants to purchase an aggregate of 1,831 shares of CombiMatrix Common Stock at an exercise price of \$32.51 per share, and (ix) CombiMatrix Series F Warrants to purchase an aggregate of 2,067,183 shares of CombiMatrix Common Stock at an exercise price of \$5.17 per share (the “*CombiMatrix Series F Warrants*”) and, collectively with the warrants referred to in the foregoing clauses (i) through (viii), the “*CombiMatrix Warrants*”). Section 2.3(a) of the CombiMatrix Disclosure

Schedule lists, as of the date of this Agreement, (i) each record holder of issued and outstanding CombiMatrix Common Stock and the number of shares held, (ii) each record holder of issued and outstanding CombiMatrix Series F Preferred Stock and the number of shares held and (iii) (A) each record holder of issued and outstanding CombiMatrix Warrants, (B) the number of shares of CombiMatrix Common Stock subject to each such CombiMatrix Warrant, (C) the series of each such CombiMatrix Warrant, (D) the exercise price of each such CombiMatrix Warrant, and (E) the expiration date of each such CombiMatrix Warrant.

(b) Except as set forth in Section 2.3(b) of the CombiMatrix Disclosure Schedule, (i) none of the outstanding shares of CombiMatrix Common Stock or CombiMatrix Preferred Stock is entitled or subject to any preemptive right, right of participation, right of maintenance or any similar right, (ii) none of the outstanding shares of CombiMatrix Common Stock or CombiMatrix Preferred Stock is subject to any right of first refusal in favor of CombiMatrix, (iii) there are no outstanding bonds, debentures, notes or other indebtedness of CombiMatrix having a right to vote on any matters on which the CombiMatrix stockholders have a right to vote, and (iv) there is no CombiMatrix Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or granting any option or similar right with respect to), any shares of CombiMatrix Common Stock or CombiMatrix Preferred Stock. Except as set forth in Section 2.3(b) of the CombiMatrix Disclosure Schedule, CombiMatrix is not under any obligation, nor is it bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of CombiMatrix Common Stock, CombiMatrix Preferred Stock, CombiMatrix Warrants or other securities. Section 2.3(b) of the CombiMatrix Disclosure Schedule accurately and completely lists all repurchase rights held by CombiMatrix and specifies (i) each holder of CombiMatrix Common Stock (including shares issued pursuant to the exercise of stock options), CombiMatrix Preferred Stock or CombiMatrix Warrant subject to such repurchase right, (ii) the original date of purchase of such CombiMatrix Common Stock, CombiMatrix Preferred Stock or CombiMatrix Warrant, (iii) the number of shares of CombiMatrix Common Stock or CombiMatrix Preferred Stock or shares underlying CombiMatrix Warrants subject to such repurchase rights, (iv) the purchase price paid by such holder, (v) any vesting schedule under which such repurchase rights lapse, and (vi) whether, to the Knowledge of CombiMatrix, the holder of such CombiMatrix Common Stock or CombiMatrix Preferred Stock subject to such repurchase right filed an election under Section 83(b) of the Code with respect to such CombiMatrix Common Stock or CombiMatrix Preferred Stock within thirty (30) days of purchase.

(c) Except for the CombiMatrix 2006 Stock Incentive Plan (the “*2006 Plan*”), and except as set forth in Section 2.3(c) of the CombiMatrix Disclosure Schedule, CombiMatrix does not have any stock option plan or any other plan, program, agreement or arrangement providing for any equity-based compensation for any Person. CombiMatrix has reserved 600,000 shares of CombiMatrix Common Stock for issuance under the 2006 Plan. Of such reserved shares of CombiMatrix Common Stock, (i) 823 shares have been previously issued pursuant to the exercise of options, (ii) 34,246 shares have been previously issued pursuant to the settlement of RSUs, (iii) 97 shares have been previously issued pursuant to the grants of restricted stock, (iv) options to purchase 64,310 shares have been granted and are currently outstanding, (v) 98,049 shares are issuable upon settlement of currently outstanding RSUs, and (vi) 402,475 shares of CombiMatrix Common Stock remain available for future award grants pursuant to the 2006 Plan. Section 2.3(c) of the CombiMatrix Disclosure Schedule sets forth the following information (A)

with respect to each CombiMatrix Option outstanding as of the date of this Agreement: (1) the name of the optionee; (2) the number of shares of CombiMatrix Common Stock subject to such CombiMatrix Option as of the date of this Agreement; (3) the exercise price of such CombiMatrix Option; (4) the date on which such CombiMatrix Option was granted; (5) the vesting schedule applicable to such CombiMatrix Option, including the number of vested and unvested shares and whether by its terms the vesting of such CombiMatrix Option would be accelerated by the Contemplated Transactions; (6) the date on which such CombiMatrix Option expires; and (7) whether such CombiMatrix Option is an “incentive stock option” (as defined in the Code) or a non-qualified stock option; and (B) with respect to each CombiMatrix RSU outstanding as of the date of this Agreement: (1) the name of the holder; (2) the number of shares of CombiMatrix Common Stock issuable upon settlement of the RSU as of the date of this Agreement; (3) the date on which such CombiMatrix RSU was granted; (4) the vesting schedule applicable to such CombiMatrix RSU, including the extent vested to date and whether by its terms the vesting of such CombiMatrix RSU would be accelerated by the Contemplated Transactions; and (5) the date on which such CombiMatrix RSU expires. CombiMatrix has made available to Invitae an accurate and complete copy of the 2006 Plan and forms of all stock option agreements and RSU agreements approved for use thereunder. Except as set forth in Section 2.3(c) of the CombiMatrix Disclosure Schedule or as contemplated by Section 1.5 of this Agreement, no vesting of CombiMatrix Options or CombiMatrix RSUs will accelerate in connection with the execution of this Agreement or the closing of the Contemplated Transactions.

(d) Except for the outstanding CombiMatrix Options and CombiMatrix RSUs identified in Section 2.3(c) of the CombiMatrix Disclosure Schedule and for the outstanding CombiMatrix Warrants and CombiMatrix Series F Preferred Stock identified in Section 2.3(a) of the CombiMatrix Disclosure Schedule, there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of CombiMatrix or any of its Subsidiaries; (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of CombiMatrix or any of its Subsidiaries; (iii) stockholder rights plan (or similar plan commonly referred to as a “poison pill”) or Contract under which CombiMatrix or any of its Subsidiaries is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities; or (iv) condition or circumstance that may give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of capital stock or other securities of CombiMatrix or any of its Subsidiaries. There are no outstanding or authorized stock appreciation rights, phantom stock, profit participation or other similar rights with respect to CombiMatrix or any of its Subsidiaries.

(e) All outstanding shares of CombiMatrix Common Stock and CombiMatrix Preferred Stock, as well as all CombiMatrix Options, CombiMatrix RSUs, CombiMatrix Warrants and all other securities of CombiMatrix, have been issued and granted in material compliance with (i) all applicable securities laws and other applicable Legal Requirements and (ii) all requirements set forth in applicable Contracts. CombiMatrix has delivered to Invitae accurate and complete copies of all outstanding CombiMatrix RSUs and CombiMatrix Warrants (other than the CombiMatrix Series F Warrants). CombiMatrix has delivered to Invitae an accurate and complete copy of the form of CombiMatrix Series F Warrant, and there are no deviations between the terms of any outstanding CombiMatrix Series F Warrants and the terms reflected in such form.

(f) With respect to the Merger as a Fundamental Transaction (as defined in CombiMatrix's Certificate of Designation of Preferences, Rights and Limitations of Series F Convertible Preferred Stock as in effect on the date of this Agreement—the “*CombiMatrix Series F Preferences Certificate*”): (i) the Fundamental Transaction Amount (as defined in the CombiMatrix Series F Preferences Certificate) is a number of shares of Invitae Common Stock equal to the product of (x) the Exchange Ratio multiplied by (y) the number of shares of CombiMatrix Common Stock underlying a share of outstanding CombiMatrix Series F Preferred Stock on the date immediately prior to the Effective Time; and (ii) such foregoing product is greater than 130% of the Stated Value (as defined in the CombiMatrix Series F Preferences Certificate) of a share of outstanding CombiMatrix Series F Preferred Stock on the date of the Effective Time.

2.4 SEC Filings; Financial Statements .

(a) CombiMatrix has filed all reports required to be filed by it with the SEC since January 1, 2014, and CombiMatrix has made available to Invitae (including through the SEC's EDGAR database) true, correct and complete copies of all such reports (collectively, the “*CombiMatrix SEC Documents*”). As of their respective dates, each of the CombiMatrix SEC Documents complied in all material respects with the applicable requirements of the Exchange Act, and none of the CombiMatrix SEC Documents, as of their respective dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. All statements, reports, schedules, forms and other documents required to have been filed by CombiMatrix or its officers with the SEC have been so filed on a timely basis. The certifications and statements required by (A) Rule 13a-14 under the Exchange Act and (B) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act) relating to the CombiMatrix SEC Documents (collectively, the “*CombiMatrix Certifications*”) are accurate and complete and comply as to form and content with all applicable Legal Requirements. As used in this Section 2, the term “file” and variations thereof shall be broadly construed to include any manner in which a document or information is furnished, supplied or otherwise made available to the SEC.

(b) Each of the consolidated financial statements (including, in each case, any notes thereto) contained in the CombiMatrix SEC Documents was prepared in accordance with United States generally accepted accounting principles (“*GAAP*”) throughout the periods indicated (except as may be indicated in the notes thereto and except that financial statements included with interim reports do not contain all notes to such financial statements) and each fairly presented in all material respects the consolidated financial position, results of operations and changes in stockholders' equity and cash flows of Invitae and its consolidated subsidiaries as at the respective dates thereof and for the respective periods indicated therein (subject, in the case of unaudited statements, to normal year-end adjustments which are not expected, individually or in the aggregate, to be material). Other than as expressly disclosed in the CombiMatrix SEC Documents filed prior to the date of this Agreement, there has been no material change in CombiMatrix's accounting methods or principles prior to the date of this Agreement that would be required to be disclosed in CombiMatrix's financial statements in accordance with GAAP. The books of account and other financial records of CombiMatrix are true and complete in all material respects.

(c) CombiMatrix's auditor has at all times since the date of enactment of the Sarbanes-Oxley Act been: (i) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act); (ii) to the Knowledge of CombiMatrix, "independent" with respect to CombiMatrix within the meaning of Regulation S-X under the Exchange Act; and (iii) to the Knowledge of CombiMatrix, in compliance with subsections (g) through (l) of Section 10A of the Exchange Act and the rules and regulations promulgated by the SEC and the Public Company Accounting Oversight Board thereunder.

(d) Except as set forth in Section 2.4(d) of the CombiMatrix Disclosure Schedule, from January 1, 2014 through the date of this Agreement, CombiMatrix has not received any comment letter from the SEC or the staff thereof or any correspondence from NASDAQ or the staff thereof relating to the delisting or maintenance of listing of the CombiMatrix Common Stock on The NASDAQ Capital Market. CombiMatrix has not disclosed any unresolved comments in its SEC Documents.

(e) Since January 1, 2014, there have been no formal internal investigations regarding financial reporting or accounting policies and practices discussed with, reviewed by or initiated at the direction of the chief executive officer or chief financial officer of CombiMatrix, the CombiMatrix Board of Directors or any committee thereof, other than ordinary course audits or reviews of accounting policies and practices or internal controls required by the Sarbanes-Oxley Act.

(f) CombiMatrix is in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act and the applicable listing and governance rules and regulations of The NASDAQ Capital Market.

(g) CombiMatrix maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that is sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including policies and procedures sufficient to provide reasonable assurance (i) that CombiMatrix maintains records that in reasonable detail accurately and fairly reflect CombiMatrix's transactions and dispositions of assets, (ii) that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, (iii) that receipts and expenditures are made only in accordance with authorizations of management and the CombiMatrix Board of Directors, and (iv) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of CombiMatrix's assets that could have a material effect on CombiMatrix's financial statements. CombiMatrix has evaluated the effectiveness of CombiMatrix's internal control over financial reporting and, to the extent required by applicable Legal Requirements, presented in any applicable CombiMatrix SEC Document that is a report on Form 10-K or Form 10-Q (or any amendment thereto) its conclusions about the effectiveness of the internal control over financial reporting as of the end of the period covered by such report or amendment based on such evaluation. CombiMatrix has disclosed to CombiMatrix's auditors and the Audit Committee of the CombiMatrix Board of Directors (and made available to Invitae a summary of the significant aspects of such disclosure) (A) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect CombiMatrix's ability to record, process, summarize and report financial information and (B) any

fraud, whether or not material, that involves management or other employees who have a significant role in CombiMatrix's internal control over financial reporting. Except as disclosed in the CombiMatrix SEC Documents filed prior to the date of this Agreement, CombiMatrix has not identified any material weaknesses in the design or operation of CombiMatrix's internal control over financial reporting. Since December 31, 2014, there have been no material changes in CombiMatrix's internal control over financial reporting.

(h) CombiMatrix's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by CombiMatrix in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information is accumulated and communicated to CombiMatrix's management as appropriate to allow timely decisions regarding required disclosure and to make the CombiMatrix Certifications.

2.5 Absence of Changes . Except as set forth in Section 2.5 of the CombiMatrix Disclosure Schedule, between January 1, 2017 and the date of this Agreement and except as otherwise expressly contemplated by this Agreement:

(a) There has not been any CombiMatrix Material Adverse Effect or an event or development that would, individually or in the aggregate, reasonably be expected to have a CombiMatrix Material Adverse Effect;

(b) There has not been any material loss, damage or destruction to, or any material interruption in the use of, any of the assets or business of CombiMatrix or any CombiMatrix Subsidiary (whether or not covered by insurance);

(c) CombiMatrix has not: (i) declared, accrued, set aside or paid any dividend or made any other distribution in respect of any shares of capital stock; or (ii) repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities except for the repurchase or reacquisition of shares pursuant to CombiMatrix rights arising upon an individual's termination as an employee, director or consultant;

(d) CombiMatrix has not sold, issued or granted, or authorized the issuance of: (i) any capital stock or other security (except for CombiMatrix Common Stock issued upon the valid exercise of outstanding CombiMatrix Options or CombiMatrix Warrants or upon the settlement of outstanding CombiMatrix RSUs); (ii) any option, warrant or right to acquire any capital stock or any other security (except for the CombiMatrix Options and CombiMatrix RSUs identified in Section 2.3(c) of the CombiMatrix Disclosure Schedule); or (iii) any instrument convertible into or exchangeable for any capital stock or other security (except for the CombiMatrix Options and CombiMatrix RSUs identified in Section 2.3(c) of the CombiMatrix Disclosure Schedule);

(e) There has been no amendment to the certificate of incorporation, bylaws or other charter or organizational documents of CombiMatrix or any CombiMatrix Subsidiary, and neither CombiMatrix nor any CombiMatrix Subsidiary has effected or been a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

(f) CombiMatrix has not amended or waived any of its rights under, or exercised its discretion to permit the acceleration of vesting under any provision of: (i) the 2006 Plan; (ii) any CombiMatrix Option, CombiMatrix RSU or any Contract evidencing or relating to any CombiMatrix Option or CombiMatrix RSU; (iii) any restricted stock purchase agreement; or (iv) any other Contract evidencing or relating to any equity award (whether payable in cash or stock);

(g) Neither CombiMatrix nor any CombiMatrix Subsidiary has formed any Subsidiary or acquired any equity interest or other interest in any other Entity;

(h) Neither CombiMatrix nor any CombiMatrix Subsidiary has: (i) lent money to any Person; (ii) incurred or guaranteed any indebtedness; (iii) issued or sold any debt securities or options, warrants, calls or other rights to acquire any debt securities; (iv) guaranteed any debt securities of others; or (v) made any capital expenditure or commitment in excess of \$50,000;

(i) Neither CombiMatrix nor any CombiMatrix Subsidiary has changed any of its accounting methods, principles or practices;

(j) Neither CombiMatrix nor any CombiMatrix Subsidiary has made, changed or revoked any material Tax election, filed any material amendment to any Tax Return, adopted or changed any accounting method in respect of Taxes, changed any annual Tax accounting period, entered into any Tax allocation agreement, Tax sharing agreement or Tax indemnity agreement, other than commercial contracts entered into in the Ordinary Course of Business with vendors, customers or landlords, entered into any closing agreement with respect to any Tax, settled or compromised any claim, notice, audit report or assessment in respect of material Taxes, applied for or entered into any ruling from any Tax authority with respect to Taxes, surrendered any right to claim a material Tax refund, or consented to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(k) Neither CombiMatrix nor any CombiMatrix Subsidiary has commenced or settled any Legal Proceeding;

(l) Neither CombiMatrix nor any CombiMatrix Subsidiary has entered into any material transaction outside the Ordinary Course of Business;

(m) Neither CombiMatrix nor any CombiMatrix Subsidiary has purchased, leased, licensed or otherwise acquired any material assets, properties or rights nor sold, leased, licensed or otherwise disposed of any of its material assets, properties or rights, nor has any Encumbrance been granted with respect to such assets, properties or rights, except for Encumbrances of immaterial assets in the Ordinary Course of Business consistent with past practices;

(n) There has been no entry into, amendment or termination of any CombiMatrix Material Contract;

(o) There has been no (i) material change in pricing or royalties or other payments set or charged by CombiMatrix or any CombiMatrix Subsidiary to its customers or licensees, (ii) agreement by CombiMatrix or any CombiMatrix Subsidiary to change pricing or royalties or other payments set or charged by persons who have licensed Intellectual Property to CombiMatrix or any CombiMatrix Subsidiary, or (iii) material change in pricing or royalties or other payments set or charged by vendors to CombiMatrix or any CombiMatrix Subsidiary or persons who have licensed Intellectual Property to CombiMatrix or any CombiMatrix Subsidiary; and

(p) Neither CombiMatrix nor any CombiMatrix Subsidiary has negotiated, agreed or committed to take any of the actions referred to in clauses “(c)” through “(o)” above (other than negotiations between the Parties to enter into this Agreement).

2.6 Title to Assets . Each of CombiMatrix and the CombiMatrix 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, including all assets reflected in the books and records of CombiMatrix or any CombiMatrix Subsidiary as being owned by CombiMatrix or such CombiMatrix Subsidiary. All of said assets are owned by CombiMatrix or a CombiMatrix Subsidiary 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 CombiMatrix Unaudited Interim Balance Sheet; (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 CombiMatrix or any CombiMatrix Subsidiary; and (iii) liens listed in Section 2.6 of the CombiMatrix Disclosure Schedule.

2.7 Real Property; Leasehold s. Neither CombiMatrix nor any CombiMatrix Subsidiary owns any real property or any interest in real property, except for the leaseholds created under the real property leases identified in Section 2.7 of the CombiMatrix Disclosure Schedule which are in full force and effect and with no existing default thereunder.

2.8 Intellectual Property .

(a) Except as identified in Section 2.8(a) of the CombiMatrix Disclosure Schedule, CombiMatrix, directly or through a CombiMatrix Subsidiary, owns, or has the right to use, and has the right to bring actions for the infringement of, all CombiMatrix IP Rights.

(b) Section 2.8(b) of the CombiMatrix Disclosure Schedule is an accurate, true and complete listing of all CombiMatrix Registered IP.

(c) Section 2.8(c) of the CombiMatrix Disclosure Schedule accurately identifies (i) all CombiMatrix IP Rights licensed to CombiMatrix or any CombiMatrix Subsidiary (other than (A) any non-customized software that (1) is so licensed solely in executable or object code form pursuant to a non-exclusive, internal use software license and other Intellectual Property associated with such software and (2) is not incorporated into, or material to the development, manufacturing, or distribution of, any of CombiMatrix’s or any CombiMatrix

Subsidiary's products, technology or services and (B) any Intellectual Property licensed ancillary to the purchase or use of equipment, reagents or other materials); (ii) the corresponding CombiMatrix Contracts pursuant to which such CombiMatrix IP Rights are licensed to CombiMatrix or any CombiMatrix Subsidiary; and (iii) whether the license or licenses granted to CombiMatrix or any CombiMatrix Subsidiary are exclusive or non-exclusive.

(d) Section 2.8(d) of the CombiMatrix Disclosure Schedule accurately identifies each CombiMatrix Contract pursuant to which any Person has been granted any license under, or otherwise has received or acquired any right (whether or not currently exercisable) or interest in, any CombiMatrix IP Rights. Except as identified in Section 2.8(d) of the CombiMatrix Disclosure Schedule, CombiMatrix is not bound by, and no CombiMatrix IP Rights are subject to, any Contract containing any covenant or other provision that in any way limits or restricts the ability of CombiMatrix or any CombiMatrix Subsidiary to use, exploit, assert or enforce any CombiMatrix IP Rights anywhere in the world, in each case as would limit the business of CombiMatrix.

(e) Except as identified in Section 2.8(e) of the CombiMatrix Disclosure Schedule, to the Knowledge of CombiMatrix, CombiMatrix or one of its Subsidiaries exclusively owns all right, title, and interest to and in CombiMatrix IP Rights (other than CombiMatrix IP Rights (i) licensed to CombiMatrix or one of its Subsidiaries, as identified in Section 2.8(c) of the CombiMatrix Disclosure Schedule, (ii) any non-customized software that (A) is so licensed solely in executable or object code form pursuant to a non-exclusive, internal use software license and other Intellectual Property associated with such software and (B) is not incorporated into, or material to the development, manufacturing, or distribution of, any of CombiMatrix's or any CombiMatrix Subsidiary's products, technology or services, and (iii) any Intellectual Property licensed ancillary to the purchase or use of equipment, reagents or other materials) free and clear of any Encumbrances (other than those Encumbrances granted pursuant to the CombiMatrix Contracts listed in Section 2.8(d) of the CombiMatrix Disclosure Schedule). Without limiting the generality of the foregoing:

(i) All documents and instruments necessary to register or apply for or renew registration of all CombiMatrix Registered IP have been validly executed, delivered and filed in a timely manner with the appropriate Governmental Body.

(ii) Each Person who is or was an employee or contractor of CombiMatrix or any CombiMatrix Subsidiary and who is or was involved in the creation or development of any CombiMatrix IP Rights has signed an agreement (A) containing an assignment of such Intellectual Property to CombiMatrix or such Subsidiary, (B) containing confidentiality provisions protecting trade secrets and confidential information of CombiMatrix and its Subsidiaries and, (C) to the Knowledge of CombiMatrix, which is valid and enforceable. No current or former stockholder, officer, director, or employee of CombiMatrix or any of its Subsidiaries has any claim, right (whether or not currently exercisable), or interest to or in any CombiMatrix IP Rights. To the Knowledge of CombiMatrix and its Subsidiaries, no employee of CombiMatrix or any or any CombiMatrix Subsidiary is (a) bound by or otherwise subject to any Contract restricting him or her from performing his or her duties for CombiMatrix or such Subsidiary or (b) in breach of any Contract with any former employer or other Person concerning CombiMatrix IP Rights or confidentiality provisions protecting trade secrets and confidential information comprising CombiMatrix IP Rights.

(iii) No funding, facilities or personnel of any Governmental Body were used, directly or indirectly, to develop or create, in whole or in part, any CombiMatrix IP Rights in which CombiMatrix or any of its Subsidiaries has an ownership interest.

(iv) CombiMatrix and each of its Subsidiaries has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all proprietary information that CombiMatrix or such Subsidiary holds as a trade secret.

(v) Neither CombiMatrix nor any of its Subsidiaries has assigned or otherwise transferred ownership of, or agreed to assign or otherwise transfer ownership of, any CombiMatrix IP Rights to any other Person.

(vi) Except as identified in Section 2.8(e)(vi) of the CombiMatrix Disclosure Schedule, to the Knowledge of CombiMatrix and its Subsidiaries, the CombiMatrix IP Rights constitute all Intellectual Property necessary for CombiMatrix and its Subsidiaries to conduct its business as currently conducted and planned to be conducted.

(f) CombiMatrix has delivered, or made available to Invitae, a complete and accurate copy, in all material respects, of all CombiMatrix IP Rights Agreements. Neither CombiMatrix nor any CombiMatrix Subsidiary is a party to any Contract (A) pursuant to which the execution, delivery and performance of this Agreement and the consummation of the Contemplated Transactions will constitute a breach, or (B) as a result of such execution, delivery and performance of this Agreement and the consummation of the Contemplated Transactions will cause the forfeiture or termination of or Encumbrance upon, or the grant of any license or other right to, or give rise to a right of forfeiture or termination of or Encumbrance upon, any CombiMatrix IP Rights or impair the right of CombiMatrix or the Surviving Corporation and its Subsidiaries to use, sell or license any CombiMatrix IP Rights or portion thereof. With respect to each of the CombiMatrix IP Rights Agreements: (i) each such agreement is valid and binding on CombiMatrix or its Subsidiaries, as applicable, and to the Knowledge of CombiMatrix the applicable third party(ies), and in full force and effect; (ii) CombiMatrix has not received any written notice of termination or cancellation under such agreement, or received any written notice of breach or default under such agreement, which breach has not been cured or waived; and (iii) neither CombiMatrix nor its Subsidiaries, and to the Knowledge of CombiMatrix, no other party to any such agreement, is in breach or default thereof in any material respect.

(g) Except as identified in Section 2.8(g) of the CombiMatrix Disclosure Schedule, the manufacture, marketing, license, sale or intended use of any product, technology or service currently licensed or sold or under development by CombiMatrix or any of its Subsidiaries (i) does not violate any license or agreement between CombiMatrix or its Subsidiaries and any third party, and, to the Knowledge of CombiMatrix and its Subsidiaries, (ii) does not infringe or misappropriate any Intellectual Property right of any other party. Except as identified in Section 2.8(g) of the CombiMatrix Disclosure Schedule, CombiMatrix has disclosed in correspondence to Invitae the third-party patents and patent applications found during all freedom to operate searches that were conducted by CombiMatrix or its Subsidiaries related to any product, technology or

service currently licensed or sold or under development by CombiMatrix or its Subsidiaries. To the Knowledge of CombiMatrix and its Subsidiaries, no third party is infringing upon, or violating any license or agreement with CombiMatrix or its Subsidiaries relating to, any CombiMatrix IP Rights. There is no current or pending challenge, claim or Legal Proceeding (including opposition, interference or other proceeding in any patent or other government office) contesting the validity, ownership or right to use, sell, license or dispose of any CombiMatrix IP Rights, nor has CombiMatrix or any of its Subsidiaries received any written notice asserting that any CombiMatrix IP Rights or the proposed use, sale, license or disposition thereof conflicts with or infringes or misappropriates or will conflict with or infringe or misappropriate the rights of any other Person.

(h) Except as identified in Section 2.8(h) of the CombiMatrix Disclosure Schedule, each item of CombiMatrix IP Rights that is CombiMatrix Registered IP is and at all times has been filed and maintained in compliance with all applicable Legal Requirements, and all Filings, payments and other actions required to be made or taken to maintain such item of CombiMatrix Registered IP in full force and effect have been made by the applicable deadline.

(i) Except as identified in Section 2.8(i) of the CombiMatrix Disclosure Schedule, to the Knowledge of CombiMatrix, no trademark (whether registered or unregistered) or trade name owned, used, or applied for by CombiMatrix or any of its Subsidiaries conflicts or interferes with any trademark (whether registered or unregistered) or trade name owned, used, or applied for by any other Person. None of the goodwill associated with or inherent in any trademark (whether registered or unregistered) in which CombiMatrix or any of its Subsidiaries has or purports to have an ownership interest has been impaired as determined by CombiMatrix or any of its Subsidiaries in accordance with GAAP.

(j) Except as set forth in the Contracts listed in Sections 2.8(c) or 2.8(d) of the CombiMatrix Disclosure Schedule, (i) neither CombiMatrix nor any of its Subsidiaries is bound by any Contract to indemnify, defend, hold harmless, or reimburse any other Person with respect to any Intellectual Property infringement, misappropriation, or similar claim, and (ii) neither CombiMatrix nor any of its Subsidiaries has ever assumed, or agreed to discharge or otherwise take responsibility for, any existing or potential liability of another Person for infringement, misappropriation, or violation of any Intellectual Property right, which assumption, agreement or responsibility remains in force as of the date of this Agreement.

(k) None of the Intellectual Property used in the business of CombiMatrix or any CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted (i) has materially malfunctioned or failed or (ii) contains any viruses, worms, Trojan horses, bugs, faults, or other devices, errors or contaminants that (x) significantly disrupt or adversely affect functionality of such Intellectual Property or any other Intellectual Property or (y) enable or assist any person to access without authorization any such Intellectual Property.

(l) No Open Source Software is included in, integrated or bundled with, or otherwise necessary for the use of (or used in) any of the Intellectual Property used in the business of CombiMatrix or any CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted. CombiMatrix has established and consistently maintained safeguards against the destruction, loss or alteration of any Data collected or obtained by CombiMatrix or any CombiMatrix Subsidiary or otherwise included within the Intellectual Property used in the business of CombiMatrix or any CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted.

(m) All Data collected or obtained by CombiMatrix or any CombiMatrix Subsidiary or otherwise included within the Intellectual Property used in the business of CombiMatrix or any CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted has at all times been collected, obtained and used in accordance with all Legal Requirements, CombiMatrix’s privacy policies and all contractual commitments of CombiMatrix or any CombiMatrix Subsidiary in all respects. No Consent of or notice to any third party is required with respect to the business of CombiMatrix or any CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted, including pursuant to CombiMatrix’s privacy policies and contractual commitments. CombiMatrix’s privacy policies and contractual commitments will not require the Consent of or notice to any third party with respect to the consummation of any of the Contemplated Transactions.

(n) No source code for any proprietary software of CombiMatrix or any CombiMatrix Subsidiary has been delivered, licensed, or made available to any Person who is not an employee of CombiMatrix (including any escrow agent). No Person has, or has asserted, any right (present, contingent or otherwise) to access any proprietary source code owned, or purported to be owned, by CombiMatrix or any CombiMatrix Subsidiary, and neither CombiMatrix nor any CombiMatrix Subsidiary has any duty or obligation (whether present, contingent, or otherwise) to deliver, license, or make available the source code for any such software to any Person who is not an employee of CombiMatrix (including any escrow agent).

(o) CombiMatrix and its Subsidiaries as well as the conduct of the business of CombiMatrix and each CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted are and have been in all respects in compliance with all Data Security Requirements. No notices have been received by, and no claims, charges or complaints have been made against, CombiMatrix or any CombiMatrix Subsidiary by any Governmental Authority or other Person alleging a violation of any Data Security Requirements. Neither CombiMatrix nor any CombiMatrix Subsidiary has received any notice or has Knowledge of any pending or threatened Legal Proceeding alleging a violation of any Person’s privacy, personal or confidentiality rights under any applicable Legal Requirement.

(p) The IT Assets operate and perform in a manner that permits CombiMatrix to operate the business of CombiMatrix or any CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted. CombiMatrix has instituted commercially reasonable backup and disaster recovery plans, procedures and facilities, consistent with current industry standards, for the business of CombiMatrix or any CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted to ensure that the IT Assets and the Data stored thereon or otherwise collected or obtained by CombiMatrix or any CombiMatrix Subsidiary or included within the Intellectual Property used in the business of CombiMatrix or any CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted (including any Personal Information) (the “ *CombiMatrix Data* ”) are protected against loss and unauthorized access, use, interruption, modification, corruption, disclosure or other misuse. To the Knowledge of CombiMatrix, there have been no failures, breakdowns, outages, bugs,

continued substandard performance, or other adverse events affecting any of the IT Assets (as a whole or with respect to any portion thereof) that have caused any disruption or interruption in or to the use of any of the IT Assets. To the Knowledge of CombiMatrix, there have been no breaches of or unauthorized access to or other misuse (either suspected or actual) of the IT Assets or the CombiMatrix Data.

2.9 Agreements, Contracts and Commitments . Section 2.9 of the CombiMatrix Disclosure Schedule identifies the following CombiMatrix Contracts, effective as of the date of this Agreement (each, a “ *CombiMatrix Material Contract* ” and collectively, the “ *CombiMatrix Material Contracts* ”):

(a) each CombiMatrix Contract relating to any bonus, deferred compensation, severance, incentive compensation, pension, profit-sharing or retirement plans, or any other employee benefit plans or arrangements;

(b) each CombiMatrix Contract relating to the employment of, or the performance of employment-related services by, any Person, including any employee, consultant or independent contractor, not terminable by CombiMatrix or its Subsidiaries on ninety (90) days’ notice without liability, except to the extent general principles of wrongful termination law may limit CombiMatrix’s, CombiMatrix’s Subsidiaries’ or such successor’s ability to terminate employees at will;

(c) each CombiMatrix Contract relating to any agreement or plan, including any stock option plan, stock appreciation right plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the Contemplated Transactions (either alone or in conjunction with any other event, such as termination of employment), or the value of any of the benefits of which will be calculated on the basis of any of the Contemplated Transactions;

(d) each CombiMatrix Contract relating to any agreement of indemnification or guaranty not entered into in the Ordinary Course of Business other than indemnification agreements between CombiMatrix and any of its respective officers or directors;

(e) each CombiMatrix Contract relating to any agreement, contract or commitment containing (A) any covenant limiting the freedom of CombiMatrix, its Subsidiaries or the Surviving Corporation to engage in any line of business or compete with any Person, (B) any most-favored pricing arrangement, (C) any exclusivity provision, or (D) any non-solicitation provision;

(f) each CombiMatrix Contract relating to any agreement, contract or commitment relating to capital expenditures and involving obligations after the date of this Agreement in excess of \$25,000 and not cancelable without penalty;

(g) each CombiMatrix Contract relating to any agreement, contract or commitment currently in force relating to the disposition or acquisition of material assets or any ownership interest in any Entity;

(h) each CombiMatrix Contract relating to any mortgages, indentures, loans, notes or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit in excess of \$25,000 or creating any material Encumbrances with respect to any assets of CombiMatrix or any CombiMatrix Subsidiary or any loans or debt obligations with officers or directors of CombiMatrix;

(i) each CombiMatrix Contract relating to (i) any distribution agreement (identifying any that contain exclusivity provisions); (ii) any agreement involving provision of services, products or technology with respect to any development activities of CombiMatrix (iii) any dealer, distributor, joint marketing, alliance, joint venture, cooperation, development or other agreement currently in force under which CombiMatrix or its Subsidiaries has continuing obligations to develop or market any product, technology or service, or any agreement pursuant to which CombiMatrix or its Subsidiaries has continuing obligations to develop any Intellectual Property that will not be owned, in whole or in part, by CombiMatrix or such CombiMatrix Subsidiary; or (iv) any Contract currently in force to license any third party to manufacture or produce any CombiMatrix product, service or technology or any Contract currently in force to sell, distribute or commercialize any CombiMatrix products, technology or services except agreements with distributors or sales representatives in the Ordinary Course of Business;

(j) each CombiMatrix Contract with any Person, including any financial advisor, broker, finder, investment banker or other Person, providing advisory services to CombiMatrix in connection with the Contemplated Transactions;

(k) each CombiMatrix IP Right Agreement; or

(l) any other agreement, contract or commitment (i) which involves payment or receipt by CombiMatrix or its Subsidiaries under any such agreement, contract or commitment of \$25,000 or more in the aggregate or obligations after the date of this Agreement in excess of \$25,000 in the aggregate, or (ii) that is material to the business or operations of CombiMatrix and its Subsidiaries.

CombiMatrix has delivered to Invitae accurate and complete (except for applicable redactions thereto) copies of all CombiMatrix Material Contracts, including all amendments thereto. There are no CombiMatrix Material Contracts that are not in written form. Neither CombiMatrix nor any of its Subsidiaries has, nor to CombiMatrix's Knowledge as of the date of this Agreement has any other party to a CombiMatrix 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 CombiMatrix Material Contract in such manner as would permit any other party to cancel or terminate any such CombiMatrix Material Contract, or would permit any other party to seek damages. As to CombiMatrix and its Subsidiaries, each CombiMatrix 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 shall not result in any material payment or payments becoming due from CombiMatrix, any CombiMatrix Subsidiary, the Surviving Corporation or Invitae to any Person under any CombiMatrix Contract or give any Person the right to terminate or alter the provisions of any CombiMatrix Contract. No Person is renegotiating, or has a right pursuant to the terms of any CombiMatrix Material Contract to change, any material amount paid or payable to CombiMatrix under any CombiMatrix Material Contract or any other material term or provision of any CombiMatrix Material Contract.

2.10 No Undisclosed Liabilities . As of the date of this Agreement, neither CombiMatrix nor any CombiMatrix Subsidiary has any liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any kind, whether accrued, absolute, contingent, matured, unmatured or other (whether or not required to be reflected in the financial statements in accordance with GAAP) (each a “*Liability*”), except for: (a) Liabilities identified as such in the “liabilities” column of the CombiMatrix Unaudited Interim Balance Sheet; (b) normal and recurring current Liabilities that have been incurred by CombiMatrix or its Subsidiaries since the date of the CombiMatrix Unaudited Interim Balance Sheet in the Ordinary Course of Business and which are not in excess of \$25,000 in the aggregate; (c) Liabilities for performance in the Ordinary Course of Business of obligations of CombiMatrix or any CombiMatrix Subsidiary under CombiMatrix Contracts, including the reasonably expected performance of such CombiMatrix Contracts in accordance with their terms (which would not include, for example, any instances of breach or indemnification); (d) Liabilities incurred in connection with the Contemplated Transactions; and (e) Liabilities listed in Section 2.10 of the CombiMatrix Disclosure Schedule.

2.11 Compliance; Permits; Restrictions; Regulatory Matters .

(a) CombiMatrix and each CombiMatrix Subsidiary is, and since January 1, 2014 has been, in compliance in all material respects with all applicable Legal Requirements. No investigation, claim, suit, proceeding, audit or other action by any Governmental Body or authority is pending or, to the Knowledge of CombiMatrix, threatened against CombiMatrix or any CombiMatrix Subsidiary, nor has any Governmental Body or authority indicated in writing to CombiMatrix an intention to conduct the same. There is no agreement, judgment, injunction, order or decree binding upon CombiMatrix or any CombiMatrix Subsidiary which (i) has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of CombiMatrix or any CombiMatrix Subsidiary, any acquisition of material property by CombiMatrix or any CombiMatrix Subsidiary or the conduct of business by CombiMatrix or any CombiMatrix Subsidiary as currently conducted or currently proposed to be conducted, (ii) may have an adverse effect on CombiMatrix’s ability to comply with or perform any covenant or obligation under this Agreement, or (iii) may have the effect of preventing, delaying, making illegal or otherwise interfering with the Merger or any of the other Contemplated Transactions.

(b) There are no proceedings pending or, to the Knowledge of CombiMatrix, threatened with respect to an alleged violation by CombiMatrix or any of its Subsidiaries of CLIA, state CLIA regulations, or any other similar Legal Requirements promulgated by a Governmental Body. Each of CombiMatrix and any CombiMatrix Subsidiary has met all applicable standards of accreditation to be, and is, accredited by the College of American Pathologists (“*CAP*”) Laboratory Accreditation Program.

(c) CombiMatrix and each of its Subsidiaries holds all required Governmental Authorizations issuable by any Governmental Body necessary for the conduct of the business of CombiMatrix or such Subsidiary as currently conducted or currently proposed to be conducted (the “ **CombiMatrix Regulatory Permits** ”), and, to the Knowledge of CombiMatrix, no such CombiMatrix Regulatory Permit has been (i) revoked, withdrawn, suspended, cancelled or terminated or (ii) modified in any adverse manner, other than immaterial adverse modifications. Section 2.11(c) of the CombiMatrix Disclosure Schedule identifies each CombiMatrix Regulatory Permit. CombiMatrix and each CombiMatrix Subsidiary is in compliance in all material respects with the CombiMatrix Regulatory Permits and has not received any written notice or other written communication from any Governmental Body regarding (A) any material violation of or failure to comply materially with any term or requirement of any CombiMatrix Regulatory Permit or (B) any revocation, withdrawal, suspension, cancellation, termination or material modification of any CombiMatrix Regulatory Permit. CombiMatrix has made available to Invitae all information requested by Invitae in CombiMatrix’s or its Subsidiaries’ possession or control relating to the following (to the extent there are any): (x) adverse event reports; clinical study reports and material study data; inspection reports, notices of adverse findings, warning letters, Filings and letters and other written correspondence to and from any Governmental Body; and meeting minutes with any Governmental Body; and (y) similar reports, material study data, notices, letters, Filings, correspondence and meeting minutes with any other Governmental Body. The rights and benefits of each CombiMatrix Regulatory Permit will be available to the Surviving Corporation immediately after the Effective Time on terms substantially identical to those enjoyed by CombiMatrix and its Subsidiaries as of the date of this Agreement and immediately prior to the Effective Time.

(d) All clinical, pre-clinical and other studies and tests conducted by or on behalf of, or sponsored by, CombiMatrix or its Subsidiaries or in which CombiMatrix or its Subsidiaries or their respective products, technology or services have participated were conducted in all material respects in accordance with standard medical and scientific research procedures and in compliance with all Legal Requirements.

(e) None of CombiMatrix or any CombiMatrix Subsidiary, or, to the Knowledge of CombiMatrix or any CombiMatrix Subsidiary, any of their respective officers, directors or managing employees (as such terms are defined in 42 C.F.R. § 1001.1001) nor, to the Knowledge of CombiMatrix or any CombiMatrix Subsidiary, any other service provider or agent (as such term is defined in 42 C.F.R. § 1001.1001) of CombiMatrix or any CombiMatrix Subsidiary has been disqualified, debarred or deregistered by any Governmental Authority, and no such disqualification, debarment, deregistration or exclusionary claims, actions, proceedings or investigations are pending or, to the Knowledge of CombiMatrix or any CombiMatrix Subsidiary, threatened.

(f) Neither CombiMatrix nor any CombiMatrix Subsidiary nor, to the Knowledge of CombiMatrix or any CombiMatrix Subsidiary, any of their respective directors, officers, employees or Collaboration Partners (solely with respect to such Collaboration Partners’ activities with CombiMatrix or any CombiMatrix Subsidiary) has (i) made an untrue statement of a material fact or fraudulent statement to the FDA or any other Health Authority, (ii) failed to disclose a material fact required to be disclosed to the FDA or any other Health Authority, or (iii) committed any other act, made any statement or failed to make any statement, that (in any such case) establishes a reasonable basis for the FDA to invoke the policy respecting “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities,” set forth in 56 Fed. Reg. 46191 (September 10, 1991) (the “ **FDA Fraud Policy** ”) or for any other Health Authority to invoke a

similar policy that may be applicable to CombiMatrix or any CombiMatrix Subsidiary in another jurisdiction. Neither CombiMatrix nor any CombiMatrix Subsidiary nor, to the Knowledge of CombiMatrix or any CombiMatrix Subsidiary, any of their respective directors, officers, employees or Collaboration Partners (solely with respect to such Collaboration Partners' activities with CombiMatrix or any CombiMatrix Subsidiary) is the subject of any pending or, to the Knowledge of CombiMatrix or any CombiMatrix Subsidiary, threatened investigation by the FDA under the FDA Fraud Policy, or the subject of any similar investigation by any other Health Authority.

(g) CombiMatrix and each CombiMatrix Subsidiary, including each of its respective systems and operations and with respect to all CombiMatrix Material Contracts, and, to the Knowledge of CombiMatrix and each CombiMatrix Subsidiary, each Collaboration Partner (solely with respect to such Collaboration Partners' activities with CombiMatrix or any CombiMatrix Subsidiary), is not now, and during the last three (3) years has not been, in material default or violation of any Health Law or order to the extent applicable to CombiMatrix or any CombiMatrix Subsidiary or by which any property or asset of CombiMatrix or any CombiMatrix Subsidiary is bound. Neither CombiMatrix nor any CombiMatrix Subsidiary nor, to the Knowledge of CombiMatrix or any CombiMatrix Subsidiary, any of their respective directors, officers, employees or Collaboration Partners (solely with respect to such Collaboration Partners' activities with CombiMatrix or any CombiMatrix Subsidiary) (i) has received any written notice or other written communication from any Health Authority alleging any violation of any Health Law, including any failure to maintain systems and programs adequate to ensure compliance with any such Health Laws, or (ii) is subject to any enforcement, regulatory or administrative proceedings against or affecting CombiMatrix or any CombiMatrix Subsidiary relating to or arising under any Health Law and, to the Knowledge of CombiMatrix and each CombiMatrix Subsidiary, no such enforcement, regulatory or administrative proceeding has been threatened. Except as set forth in Section 2.11(g) of the CombiMatrix Disclosure Schedule, during the three (3) years prior to the date of this Agreement, neither CombiMatrix nor any CombiMatrix Subsidiary has received any FDA Form 483 or other Governmental Authority notice of inspectional observations, "warning letters," "untitled letters" or, to the Knowledge of CombiMatrix or any CombiMatrix Subsidiary, requests or requirements to make changes to the operations of CombiMatrix or any CombiMatrix Subsidiary (including any diagnostic testing services, sample collection kits, or other products or services of CombiMatrix or any CombiMatrix Subsidiary), or similar correspondence or written notice from the FDA or other Governmental Authority and alleging or asserting noncompliance with any applicable Legal Requirements, permits or such requests or requirements of a Governmental Authority.

(h) CombiMatrix and each CombiMatrix Subsidiary have filed with the applicable Health Authority all required Filings, including adverse event reports. All such Filings were in material compliance with applicable Legal Requirements when filed, and no deficiencies have been asserted in writing by any applicable Health Authority with respect to any such Filings.

(i) Neither CombiMatrix nor any CombiMatrix Subsidiary, nor any of their respective officers, directors, employees or agents, has engaged in any activities which are cause for criminal or civil penalties against, or mandatory or permissive exclusion of, CombiMatrix or any CombiMatrix Subsidiary from Medicare, Medicaid, or any other federal health care program under 42 U.S.C. §§ 1320a-7, 1320a-7a, 1320a-7b, or 1395nn, the Federal Employees Health Benefits program statute, or the regulations promulgated pursuant to such statutes or related state or local statutes or regulations.

(j) The diagnostic tests of CombiMatrix and each CombiMatrix Subsidiary are being lawfully marketed in all material respects under the FDA's current policies and grant of enforcement discretion applied to traditional laboratory developed tests ("LDTs"). Without limiting the generality of the foregoing, all diagnostic tests that are considered by CombiMatrix or any CombiMatrix Subsidiary to be LDTs are and, during such periods when such LDTs have been sold by CombiMatrix and subject to CLIA, always have been: (i) designed, manufactured and used within a single laboratory that is approved in accordance with CLIA; (ii) validated to meet performance characteristics relating to analytical validity for the use of each test system in the laboratory's own environment; and (iii) utilized under the order of a licensed healthcare provider. Any diagnostic testing that CombiMatrix or any CombiMatrix Subsidiary conducts outside of the United States, and any specimen collection kits that CombiMatrix or any CombiMatrix Subsidiary distributes outside of the United States, complies in all material respects with the Legal Requirements of any country where the diagnostic testing is performed or where the specimen collection kits are distributed.

(k) All submissions made by CombiMatrix or any CombiMatrix Subsidiary or by any third party on behalf of CombiMatrix or any CombiMatrix Subsidiary in connection with any of their respective diagnostic tests or other products to any Governmental Authority were, and as of the Closing Date will be, accurate and complete in all material respects.

(l) There are no investigations, suits, claims, actions or proceedings against or affecting CombiMatrix or any CombiMatrix Subsidiary pending or, to the knowledge of CombiMatrix or any CombiMatrix Subsidiary, threatened, relating to or arising under (i) the Federal Food, Drug and Cosmetic Act or the regulations of the FDA promulgated thereunder or similar Legal Requirements, or (ii) Information and Privacy Security Laws, including alleging a violation of any Person's rights under any Information Privacy and Security Laws or any of the former or current published privacy policies of CombiMatrix or any CombiMatrix Subsidiary. Neither CombiMatrix nor any CombiMatrix Subsidiary has received any notices from the U.S. Department of Health and Human Services Office for Civil Rights, Department of Justice, Federal Trade Commission, or the Attorney General of any state, or any equivalent foreign Governmental Authority, relating to any such violations.

(m) There are no pending, concluded in the last three (3) years or, to the Knowledge of CombiMatrix or any CombiMatrix Subsidiary, threatened investigations, suits, claims, actions or proceedings, including any voluntary disclosures or self-disclosures, relating to the participation of CombiMatrix or any CombiMatrix Subsidiary in any payment program, including Medicare, Medicaid, Tricare, the Federal Employees Health Benefit Program, and private third party payor programs ("Payment Programs"). Neither CombiMatrix nor any CombiMatrix Subsidiary is subject to, nor has CombiMatrix or any CombiMatrix Subsidiary been subjected to in the last three (3) years, any pre-payment utilization review or other utilization review by any Payment Program. Except as set forth in Section 2.11(m) of the CombiMatrix Disclosure Schedule, no Payment Program is currently requesting or has requested in the last three (3) years or, to the Knowledge of CombiMatrix or

any CombiMatrix Subsidiary, is threatening or has in the last three (3) years threatened any recoupment, refund, or set-off from CombiMatrix or any CombiMatrix Subsidiary in excess of \$10,000. No Payment Program has imposed in the last three (3) years a fine, penalty or other sanction on CombiMatrix or any CombiMatrix Subsidiary. Neither CombiMatrix nor any CombiMatrix Subsidiary has been excluded in the last three (3) years from participation in any Payment Program. All billing practices of CombiMatrix and each CombiMatrix Subsidiary with respect to all Payment Programs have been in compliance with all Legal Requirements applicable to CombiMatrix and each CombiMatrix Subsidiary in all material respects.

(n) CombiMatrix and each CombiMatrix Subsidiary, and, to the Knowledge of CombiMatrix and each CombiMatrix Subsidiary, their respective Representatives are in compliance (and since January 1, 2014 have complied) in all material respects with: (i) the provisions of the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §§ 78dd-1, et seq.) (“**FCPA**”); and (ii) the provisions of all applicable anti-bribery, anti-corruption and anti-money laundering Legal Requirements of each jurisdiction in which CombiMatrix and any CombiMatrix Subsidiary operates or has operated and in which any agent thereof is conducting or has conducted business involving CombiMatrix or any CombiMatrix Subsidiary. Since January 1, 2014, CombiMatrix and each CombiMatrix Subsidiary, and, to the Knowledge of CombiMatrix and each CombiMatrix Subsidiary, their respective Representatives have not paid, offered or promised to pay, or authorized or ratified the payment, directly or indirectly, of any monies or anything of value to any national, provincial, municipal or other Government Official or any political party or candidate for political office for the purpose of corruptly influencing any act or decision of such official or of the government to obtain or retain business, or direct business to any person or to secure any other improper benefit or advantage, in each case in violation in any material respect of the FCPA and any applicable Legal Requirements described in clause (ii) above. CombiMatrix and each CombiMatrix Subsidiary (x) have instituted policies and procedures designed to ensure compliance with the FCPA and other applicable anti-bribery and anti-corruption Legal Requirements in each jurisdiction in which CombiMatrix and any CombiMatrix Subsidiary operates and (y) have maintained and will maintain such policies and procedures in force.

(o) CombiMatrix and each CombiMatrix Subsidiary and their respective Affiliates are, and since January 1, 2014 have been, in material compliance with all applicable U.S. statutory and regulatory requirements concerning the exportation, re-exportation and importation of products, technology, and services, and other international transactions, including: (i) Legal Requirements, regulations and policies enforced by U.S. Customs and Border Protection; (ii) the Arms Export Control Act and the International Traffic in Arms Regulations (22 C.F.R. Part 120 et seq.) administered by the U.S. Department of State’s Directorate of Defense Trade Controls; (iii) the Export Administration Regulations (15 C.F.R. Part 730 et seq.) administered by the U.S. Department of Commerce’s Bureau of Industry and Security (“**BIS**”); (iv) U.S. anti-boycott regulations administered by BIS and the International Revenue Service; (v) all Legal requirements concerning export and import reporting administered by the U.S. Census Bureau; and (vi) the economic sanctions Legal Requirements, regulations and associated executive orders administered by the U.S. Departments of Treasury’s Office of Foreign Assets Control (“**OFAC**”) (collectively, the “**Trade Control Laws**”). Since January 1, 2014, unless authorized by the relevant agency of the U.S. Government, CombiMatrix and each CombiMatrix Subsidiary and their respective Affiliates have not conducted any transactions directly or indirectly related to: (x) Cuba, Iran, North Korea, Sudan or Syria; (y) individuals or entities identified on restricted party lists

maintained by the U.S. Government, including the List of Specially Designated Nationals and Blocked Persons (“**SDN List**”), Foreign Sanctions Evader List (“**FSE List**”) and Sectoral Sanctions Identification List (“**SSI List**”) administered by OFAC and the Denied Parties List, Unverified List and Entity List administered by BIS (collectively, “**Restricted Parties**”); or (z) entities owned or controlled by anyone on the SDN List, the SSI List or the FSE List. Neither CombiMatrix nor any CombiMatrix Subsidiary is a Restricted Party or is owned or controlled by a Restricted Party. There is no pending or, to the Knowledge of CombiMatrix and each CombiMatrix Subsidiary, threatened action against CombiMatrix or any CombiMatrix Subsidiary, nor any pending voluntary disclosure by CombiMatrix or any CombiMatrix Subsidiary or their respective Affiliates to any government authority in connection with an alleged material violation of any Trade Control Laws. Since January 1, 2014, neither CombiMatrix nor any of the CombiMatrix Subsidiaries or their respective Affiliates have been cited or fined for failure to comply with, or submitted any voluntary self-disclosures regarding material non-compliance with, Trade Control Laws.

(p) The receipt, collection, monitoring, maintenance, creation, transmission, use, analysis, disclosure, storage, disposal and security of Personal Information by the Acquired Corporations have, in all material respects, complied, and comply in all material respects, with (i) any applicable CombiMatrix Contract, (ii) applicable Information Privacy and Security Laws, (iii) to the extent applicable, PCI DSS, and (iv) all Consents and protocols of the Acquired Corporation that apply to the receipt, use, processing or disclosure of Personal Information (collectively, “**PII Consents**”). Each Acquired Corporation has, in all material respects, all necessary PII Consents to receive, process and disclose all Personal Information in that Acquired Corporation’s possession or under its control in connection with the operation of the business operations of the Acquired Corporations.

(q) Each Acquired Corporation has entered into a business associate agreement (as described by 45 C.F.R. § 164.504(e) or § 164.314(a)) with each third party in each instance where: (i) that Acquired Corporation acts as a business associate (as defined in 45 C.F.R. § 160.103) to that third party; or (ii) that third party receives, creates, transmits or maintains protected health information (as defined in 45 C.F.R. § 160.103) from or on behalf of that Acquired Corporation, in each case as required by, and in conformity in all material respects with, applicable Information Privacy and Security Laws and the applicable CombiMatrix Contracts to which the member is a party.

(r) Each Acquired Corporation has adopted policies and procedures that apply to that Acquired Corporation with respect to privacy, data protection, security and the collection, transfer and use of Personal Information gathered or accessed in the course of the operations of the Acquired Corporations, and those policies and procedures are commercially reasonable and comply with applicable Information Privacy and Security Law. Each Acquired Corporation has taken reasonable actions and measures to protect the confidentiality, integrity and security of its Personal Information and IT Assets against any unauthorized control, use, access, interruption, modification or corruption and those actions and measures are in conformance with Information Privacy and Security Laws.

(s) There has been no breach of the security of any IT Assets, or unauthorized access, use or disclosure of any Personal Information, owned, used, stored, received, or controlled by or on behalf of any Acquired Corporation, including any unauthorized access, use or disclosure of Personal Information that would constitute a breach for which notification to individuals and/or Governmental Bodies is required under any applicable Information Privacy and Security Laws.

(t) Each Acquired Corporation has performed all security risk assessments as applicable to that Acquired Corporation and required by: (i) the standards set forth at 45 C.F.R. § 164.308(a); (ii) all other Information Privacy and Security Laws; (iii) any applicable CombiMatrix Contracts; or (iv) the PCI DSS (collectively, the “*Security Risk Assessments*”). The Acquired Corporations have reasonably addressed all threats and deficiencies identified in every Security Risk Assessment.

2.12 Tax Matters .

(a) CombiMatrix and each CombiMatrix Subsidiary have timely filed all federal income Tax Returns and other material Tax Returns that they were required to file under applicable Legal Requirements. All such Tax Returns were correct and complete in all material respects and have been prepared in material compliance with all applicable Legal Requirements. Neither CombiMatrix nor any CombiMatrix Subsidiary is currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where CombiMatrix or any CombiMatrix Subsidiary does not file Tax Returns that it is subject to taxation by that jurisdiction.

(b) All material Taxes due and owing by CombiMatrix or any CombiMatrix Subsidiary on or before the date of this Agreement (whether or not shown on any Tax Return) have been paid. The unpaid Taxes of CombiMatrix and any CombiMatrix Subsidiary have been reserved for on the CombiMatrix Unaudited Interim Balance Sheet in accordance with GAAP. Since the date of the CombiMatrix Unaudited Interim Balance Sheet, neither CombiMatrix nor any CombiMatrix Subsidiary has incurred any Liability for Taxes outside the Ordinary Course of Business or otherwise inconsistent with past custom and practice.

(c) CombiMatrix and each CombiMatrix Subsidiary have withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party.

(d) There are no Encumbrances for Taxes (other than Taxes not yet due and payable or Taxes that are being contested in good faith and for which adequate reserves have been made on CombiMatrix’s Unaudited Interim Balance Sheet) upon any of the assets of CombiMatrix or any CombiMatrix Subsidiary.

(e) No material deficiencies for Taxes with respect to CombiMatrix or any CombiMatrix Subsidiary have been claimed, proposed or assessed by any Governmental Body in writing. There are no pending (or, based on written notice, threatened) audits, assessments or other actions for or relating to any liability in respect of Taxes of CombiMatrix or any CombiMatrix Subsidiary. No issues relating to Taxes of CombiMatrix or any CombiMatrix Subsidiary were raised by the relevant Tax authority to CombiMatrix or any CombiMatrix Subsidiary in any completed audit or examination that would reasonably be expected to result in a material amount of Taxes in a later taxable period. CombiMatrix has delivered or made available to Invitae

complete and accurate copies of all federal income Tax and all other material Tax Returns of CombiMatrix and each CombiMatrix Subsidiary (and predecessors of each) for all taxable years remaining open under the applicable statute of limitations, and complete and accurate copies of all examination reports and statements of deficiencies assessed against or agreed to by CombiMatrix and each CombiMatrix Subsidiary (and predecessors of each), with respect to federal income Tax and all other material Taxes. Neither CombiMatrix nor any CombiMatrix Subsidiary (or any of their predecessors) has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, nor has any request been made in writing for any such extension or waiver.

(f) All material elections with respect to Taxes affecting CombiMatrix or any CombiMatrix Subsidiary as of the date of this Agreement are set forth in Section 2.12(f) of the CombiMatrix Disclosure Schedule. Neither CombiMatrix nor any CombiMatrix Subsidiary (i) has agreed, or is required, to make any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise; (ii) has made an election, or is required, to treat any of its assets as owned by another Person for Tax purposes or as a tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code; (iii) has acquired or owns any assets that directly or indirectly secure any debt the interest on which is tax exempt under Section 103(a) of the Code; (iv) has made or will make a consent dividend election under Section 565 of the Code; (v) has elected at any time to be treated as an S corporation within the meaning of Sections 1361 or 1362 of the Code; or (vi) has made any of the foregoing elections or is required to apply any of the foregoing rules under any comparable provision of state, local or foreign law.

(g) Neither CombiMatrix nor any CombiMatrix Subsidiary has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(h) Neither CombiMatrix nor any CombiMatrix Subsidiary is a party to any Tax allocation, Tax sharing or similar agreement (including indemnity arrangements), other than commercial contracts entered into in the Ordinary Course of Business with vendors, customers and landlords.

(i) Except as set forth in Section 2.12(i) of the CombiMatrix Disclosure Schedule, neither CombiMatrix nor any CombiMatrix Subsidiary has ever been a member of an affiliated group filing a consolidated, combined or unitary Tax Return (other than a group the common parent of which is CombiMatrix) for federal, state, local or foreign Tax purposes. Neither CombiMatrix nor any CombiMatrix Subsidiary has any Liability for the Taxes of any Person (other than CombiMatrix and any CombiMatrix Subsidiary) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by Contract, or otherwise.

(j) Neither CombiMatrix nor any CombiMatrix Subsidiary has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code or Section 361 of the Code.

(k) Neither CombiMatrix nor any CombiMatrix Subsidiary will be required to include any item of income in, or exclude any item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any (i) installment sale or other open transaction disposition made on or prior to the Closing Date, or (ii) agreement with any Tax authority (including any closing agreement described in Section 7121 of the Code or any similar provision of state, local or foreign law) made or entered into on or prior to the Closing Date.

(l) Neither CombiMatrix nor any CombiMatrix Subsidiary is a partner for Tax purposes with respect to any joint venture, partnership, or, to the Knowledge of CombiMatrix, other arrangement or contract which is treated as a partnership for Tax purposes.

(m) Neither CombiMatrix nor any CombiMatrix Subsidiary has entered into any transaction identified as a “listed transaction” for purposes of Treasury Regulations Sections 1.6011-4(b)(2) or 301.6111-2(b)(2).

(n) Neither CombiMatrix nor any CombiMatrix Subsidiary has taken any action, or has any knowledge of any fact or circumstance, that could reasonably be expected to prevent the Merger, together with the Warrant Exchange Offer, from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

2.13 Employee and Labor Matters; Benefit Plans .

(a) The employment of each of the CombiMatrix and CombiMatrix Subsidiary employees is terminable by CombiMatrix or the applicable CombiMatrix Subsidiary at will. CombiMatrix has made available to Invitae accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and other materials relating to the employment of the CombiMatrix Associates to the extent currently effective and material.

(b) To the Knowledge of CombiMatrix, no officer or Key Employee of CombiMatrix or any CombiMatrix Subsidiary intends to terminate his or her employment with CombiMatrix or the applicable CombiMatrix Subsidiary, nor has any such officer or Key Employee threatened or expressed in writing any intention to do so.

(c) Neither CombiMatrix nor any CombiMatrix Subsidiary is a party to or bound by, nor has a duty to bargain under, any collective bargaining agreement or other Contract with a labor organization representing any of its employees, and there are no labor organizations representing, purporting to represent or, to the Knowledge of CombiMatrix, seeking to represent any employees of CombiMatrix or any CombiMatrix Subsidiary. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, job action, union organizing activity, question concerning representation or any similar activity or dispute, affecting CombiMatrix or any CombiMatrix Subsidiary. No event has occurred, and no condition or circumstance exists, that might directly or indirectly be likely to give rise to or provide a basis for the commencement of any such strike, slowdown, work stoppage, lockout, job action, union organizing activity, question concerning representation or any similar activity or dispute. Neither CombiMatrix nor any CombiMatrix Subsidiary is or has been engaged in any unfair labor practice within the meaning of the National Labor Relations Act. There is no Legal Proceeding, claim,

labor dispute or grievance pending or, to the Knowledge of CombiMatrix, threatened or reasonably anticipated relating to any employment or independent contractor contract, privacy right, labor dispute, wage and hour dispute, leave of absence, plant closing notification, workers' compensation policy, long-term disability policy, harassment, discrimination, retaliation, immigration violation, employment statute or regulation, or workplace safety matter involving any CombiMatrix Associate, including charges of unfair labor practices or discrimination complaints.

(d) Section 2.13(d) of the CombiMatrix Disclosure Schedule lists all written employee benefit plans (as defined in Section 3(3) of ERISA) and all bonus, equity-based, incentive, deferred compensation, retirement or supplemental retirement, profit sharing, severance, golden parachute, vacation, cafeteria, dependent care, medical care, employee assistance program, education or tuition assistance programs and other similar fringe or employee benefit plans, programs or arrangements, including any employment or executive compensation or severance agreements which are currently in effect relating to any present or former employee or director of CombiMatrix or any CombiMatrix Subsidiary (or any trade or business (whether or not incorporated) which is a CombiMatrix Affiliate) or which is maintained by, administered or contributed to by, or required to be contributed to by, CombiMatrix, any CombiMatrix Subsidiary or any CombiMatrix Affiliate, or under which CombiMatrix or any CombiMatrix Subsidiary or any CombiMatrix Affiliate has any current or may incur liability after the date of this Agreement (each, an “*CombiMatrix Employee Plan*”). To the Knowledge of CombiMatrix, there are no unwritten CombiMatrix Employee Plans in effect.

(e) With respect to CombiMatrix Options granted pursuant to the 2006 Plan, (i) each CombiMatrix Option intended to qualify as an “incentive stock option” under Section 422 of the Code so qualifies, (ii) each grant of a CombiMatrix Option was duly authorized no later than the date on which the grant of such CombiMatrix Option was by its terms to be effective (the “*Grant Date*”) by all necessary corporate action, including, as applicable, approval by the board of directors of CombiMatrix (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto, (iii) each CombiMatrix Option grant was made in accordance with the terms of the 2006 Plan, the Exchange Act and all other applicable laws and regulatory rules or requirements, including the rules of NASDAQ and any other exchange on which CombiMatrix securities are traded, (iv) the per share exercise price of each CombiMatrix Option was not less than the fair market value of a share of CombiMatrix Common Stock on the applicable Grant Date, and (v) each such CombiMatrix Option grant was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of CombiMatrix and disclosed in CombiMatrix filings with the SEC in accordance with the Exchange Act and all other applicable Legal Requirements. CombiMatrix has not knowingly granted, and there is no and has been no policy or practice of CombiMatrix of granting, CombiMatrix Options prior to, or otherwise coordinate the grant of CombiMatrix Options with, the release or other public announcement of material information regarding CombiMatrix or its results of operations or prospects.

(f) No CombiMatrix Options, RSUs, stock appreciation rights or other equity-based awards issued or granted by CombiMatrix are subject to the requirements of Code Section 409A. Each “nonqualified deferred compensation plan” (as such term is defined under Section 409A(d)(1) of the Code and the guidance thereunder) maintained by or under which

CombiMatrix or any of its former Subsidiaries makes, is obligated to make or promises to make, payments (each, a “*CombiMatrix 409A Plan*”) complies in all material respects, in both form and operation, with the requirements of Code Section 409A and the guidance thereunder. No payment to be made under any CombiMatrix 409A Plan is, or to the Knowledge of CombiMatrix will be, subject to the penalties of Code Section 409A(a)(1).

(g) CombiMatrix is in compliance with all of its bonus, commission and other compensation plans and has paid any and all amounts (or pro rata portion thereof) required to be paid under such plans through the calendar quarter preceding the Effective Time, and is properly accruing any and all applicable bonuses and commissions, and is not liable for any payments, taxes or penalties for failure to comply with any of the terms or conditions of such plans or the laws governing such plans.

(h) Except as set forth in Section 2.13(h) of the CombiMatrix Disclosure Schedule, each CombiMatrix Employee Plan can be amended, terminated or otherwise discontinued in accordance with its terms, without material Liability to CombiMatrix, the Surviving Corporation, Invitae or any of their Affiliates (other than ordinary administrative expenses typically incurred in a termination event). Except as set forth in Section 2.13(h) of the CombiMatrix Disclosure Schedule, neither CombiMatrix nor any CombiMatrix Affiliate has announced its intention to modify or amend any CombiMatrix Employee Plan or adopt any arrangement or program which, once established, would come within the definition of a CombiMatrix Employee Plan, and to the Knowledge of CombiMatrix, each asset held under such CombiMatrix Employee Plan may be liquidated or terminated without the imposition of any material redemption fee, surrender charge or comparable Liability.

(i) Each CombiMatrix Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter or may rely on a favorable opinion or advisory letter from the Internal Revenue Service, with respect to such qualified status from the Internal Revenue Service. To the Knowledge of CombiMatrix, nothing has occurred that would reasonably be expected to adversely affect the qualified status of any such CombiMatrix Employee Plan or the exempt status of any related trust. Each CombiMatrix Employee Plan has been maintained in compliance, in all material respects, with its terms and, both as to form and operation, with all applicable Legal Requirements, including the Code and ERISA. CombiMatrix and each CombiMatrix Affiliate has performed all obligations required to be performed by it under, is not in default under or in violation of, and has no knowledge of any default or violation by any other party to, any of the CombiMatrix Employee Plans. Neither CombiMatrix nor any CombiMatrix Affiliate is subject to any Liability or penalty under Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any of the CombiMatrix Employee Plans. All contributions required to be made by CombiMatrix or any CombiMatrix Affiliate to any CombiMatrix Employee Plan have been made on or before their due dates (and no further contributions will be due or will have accrued thereunder as of the Closing Date, other than contributions accrued in the Ordinary Course of Business consistent with past practice). No suit, administrative proceeding, action or other litigation has been initiated against, or to the Knowledge of CombiMatrix, is threatened, against or with respect to any CombiMatrix Employee Plan, including any audit or inquiry by the IRS, United States Department of Labor or other Governmental Body.

(j) Neither CombiMatrix nor any CombiMatrix Subsidiary has engaged in any transaction in violation of Sections 404 or 406 of ERISA or any “prohibited transaction,” as defined in Section 4975(c)(1) of the Code, for which no exemption exists under Section 408 of ERISA or Section 4975(c)(2) or (d) of the Code, or has otherwise violated the provisions of Part 4 of Title I, Subtitle B of ERISA. Neither CombiMatrix nor any CombiMatrix Subsidiary has knowingly participated in a violation of Part 4 of Title I, Subtitle B of ERISA by any plan fiduciary of any CombiMatrix Employee Plan subject to ERISA and neither CombiMatrix nor any CombiMatrix Subsidiary has been assessed any civil penalty under Section 502(l) of ERISA.

(k) No CombiMatrix Employee Plan is subject to Title IV or Section 302 of ERISA or Section 412 of the Code, and neither CombiMatrix nor any CombiMatrix Subsidiary or CombiMatrix Affiliate has ever maintained, contributed to or partially or completely withdrawn from, or incurred any obligation or liability with respect to, any such plan. No CombiMatrix Employee Plan is a Multiemployer Plan, and neither CombiMatrix nor any CombiMatrix Subsidiary or CombiMatrix Affiliate has ever contributed to or had an obligation to contribute, or incurred any liability in respect of a contribution, to any Multiemployer Plan. No CombiMatrix Employee Plan is a Multiple Employer Plan.

(l) Except as set forth in Section 2.13(l) of the CombiMatrix Disclosure Schedule, no CombiMatrix Employee Plan provides for medical or death benefits beyond termination of service or retirement, other than (i) pursuant to COBRA or an analogous state law requirement or (ii) death or retirement benefits under a CombiMatrix Employee Plan qualified under Section 401(a) of the Code. Neither CombiMatrix nor any CombiMatrix Affiliate sponsors or maintains any self-funded employee benefit plan. No CombiMatrix Employee Plan is subject to any Legal Requirement of any foreign jurisdiction outside of the United States.

(m) Except as set forth in Schedule 2.13(m), neither CombiMatrix nor any CombiMatrix Subsidiary is a party to any Contract that has resulted or would reasonably be expected to result, separately or in the aggregate, in the payment of (i) any “excess parachute payment” within the meaning of Section 280G of the Code and (ii) any amount the deduction for which would be disallowed under Section 162(m) of the Code.

(n) To the Knowledge of CombiMatrix, no payment pursuant to any CombiMatrix Employee Plan or other arrangement to any “service provider” (as such term is defined in Section 409A of the Code and the United States Treasury Regulations and IRS guidance thereunder) to CombiMatrix or any CombiMatrix Subsidiary, including the grant, vesting or exercise of any stock option, would subject any Person to tax pursuant to Section 409A(1) of the Code, whether pursuant to the Contemplated Transactions or otherwise.

(o) There is no Contract or arrangement to which CombiMatrix or, to the Knowledge of CombiMatrix, any CombiMatrix Affiliate is a party or by which it is bound to compensate any of its current or former employees, independent contractors or directors for additional income or excise taxes paid pursuant to Sections 409A or 4999 of the Code.

(p) CombiMatrix and each of its Subsidiaries has complied in all material respects with all state and federal laws applicable to employees, including COBRA, FMLA, CFRA, HIPAA, the Women's Health and Cancer Rights Act of 1998, the Newborn's and Mothers' Health Protection Act of 1996, and any similar provisions of state law applicable to its employees. To the extent required under HIPAA and the regulations issued thereunder, CombiMatrix and each of its Subsidiaries has, prior to the Closing Date, performed all obligations under the medical privacy rules of HIPAA (45 C.F.R. Parts 160 and 164), the electronic data interchange requirements of HIPAA (45 C.F.R. Parts 160 and 162), and the security requirements of HIPAA (45 C.F.R. Part 142). Neither CombiMatrix nor any of its Subsidiaries has any unsatisfied obligations to any employees or qualified beneficiaries pursuant to COBRA, HIPAA or any state law governing health care coverage or extension. CombiMatrix and each CombiMatrix Affiliate is in compliance in all material respects with all applicable requirements of the Patient Protection and Affordable Care Act of 2010, as amended, and all regulations thereunder (together, the "ACA"), including all requirements relating to eligibility waiting periods and the offer of or provision of minimum essential coverage that is compliant with Section 36B(c)(2)(C) of the Code and the regulations issued thereunder to full-time employees as defined in Section 4980H(c)(4) of the Code and the regulations issued thereunder. No excise tax or penalty under the ACA, including Sections 4980D and 4980H of the Code, is outstanding, has accrued, or has arisen with respect to any period prior to the Closing, with respect to any CombiMatrix Employee Plan. Neither CombiMatrix nor any CombiMatrix Affiliate has any unsatisfied obligations to any employees or qualified beneficiaries pursuant to the ACA, or any state or local Legal Requirement governing health care coverage or benefits that would reasonably be expected to result in any material liability to CombiMatrix. CombiMatrix and each CombiMatrix Affiliate have maintained all records necessary to demonstrate its compliance with the ACA.

(q) CombiMatrix and each of its Subsidiaries is in material compliance with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, worker classification, tax withholding, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation and hours of work, and in each case, with respect to employees: (i) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to employees, (ii) is not liable for any arrears of wages, severance pay or any Taxes or any penalty of any material amount for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no actions, suits, claims or administrative matters pending or, to the Knowledge of CombiMatrix, threatened against CombiMatrix or any of its Subsidiaries relating to any employee, employment agreement or CombiMatrix Employee Plan. There are no pending or, to the Knowledge of CombiMatrix, threatened claims or actions against CombiMatrix, any of its Subsidiaries, any CombiMatrix trustee or any trustee of any Subsidiary under any worker's compensation policy or long-term disability policy. Neither CombiMatrix nor any Subsidiary thereof is party to a conciliation agreement, consent decree or other agreement or order with any federal, state or local agency or governmental authority with respect to employment practices.

(r) Except as set forth in Section 2.13(r) of the CombiMatrix Disclosure Schedule, none of the execution and delivery of this Agreement, or the consummation of the Contemplated Transactions or any termination of employment or service or any other event in connection therewith or subsequent thereto will, individually or together or with the occurrence of some other event, (i) result in any payment (including severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any employee, independent contractor or director of CombiMatrix, (ii) materially increase or otherwise enhance any benefits otherwise payable by CombiMatrix, (iii) result in the acceleration of the time of payment or vesting of any such benefits, except as required under Section 411(d)(3) of the Code, (iv) increase the amount of compensation due to any Person by CombiMatrix or (v) result in the forgiveness in whole or in part of any outstanding loans made by CombiMatrix to any Person.

(s) No current or former independent contractor of CombiMatrix who terminated service since January 1, 2011, would reasonably be deemed to be a misclassified employee. Except as set forth in Section 2.13(s) of the CombiMatrix Disclosure Schedule, no independent contractor is eligible to participate in any CombiMatrix Employee Plan. Neither CombiMatrix nor any of its Subsidiaries has any material liability with respect to any misclassification of: (a) any Person as an independent contractor rather than as an employee, (b) any employee leased from another employer or (c) any employee currently or formerly classified as exempt from overtime wages. Neither CombiMatrix nor any Subsidiary has taken any action which would constitute a “plant closing” or “mass layoff” within the meaning of the WARN Act or similar state or local law, issued any notification of a plant closing or mass layoff required by the WARN Act or similar state or local law, or incurred any liability or obligation under WARN or any similar state or local law that remains unsatisfied. No terminations of employees of CombiMatrix or any of its Subsidiaries prior to the Closing would trigger any notice or other obligations under the WARN Act or similar state or local law.

(t) With respect to each CombiMatrix Employee Plan, CombiMatrix has made available to Invitae a true and complete copy of, to the extent applicable, (i) such CombiMatrix Employee Plan, (ii) the three (3) most recent annual reports (Form 5500) as filed with the Internal Revenue Service, (iii) each currently effective trust agreement related to such CombiMatrix Employee Plan, (iv) the most recent summary plan description for each CombiMatrix Employee Plan for which such description is required, along with all summaries of material modifications, amendments, resolutions and all other material plan documentation related thereto in the possession of CombiMatrix, (v) the most recent Internal Revenue Service determination or opinion letter or analogous ruling under foreign law issued with respect to any CombiMatrix Employee Plan, (vi) all material notices, letters or other correspondence to or from any Governmental Body or agency thereof within the last three years, (vii) all non-discrimination tests for the most recent three plan years, (viii) all material written agreements and Contracts currently in effect, including administrative service agreements, group annuity contracts and group insurance contracts, (ix) all material written employee communications within the past three years, and (x) all registration statements and prospectuses prepared in connection with each CombiMatrix Employee Plan.

2.14 Environmental Matters .

(a) CombiMatrix and each CombiMatrix Subsidiary is in compliance with all applicable Environmental Laws in all material respects, which compliance includes the possession by CombiMatrix of all required permits, licenses, or authorizations issued, granted, or given by or under the authority of any Governmental Body pursuant to any applicable Environmental Laws,

and is in material compliance with the terms and conditions thereof. Neither CombiMatrix nor any CombiMatrix Subsidiary has received since January 1, 2014 any written notice or other communication, whether from a Governmental Body, citizens group, employee or otherwise, that alleges that CombiMatrix or any CombiMatrix Subsidiary is not in material compliance with any Environmental Law. To the Knowledge of CombiMatrix, there are no circumstances that may prevent or interfere with CombiMatrix's or any of its Subsidiaries' compliance with any Environmental Law in the future. Since January 1, 2014: (i) no current or prior real property leased or controlled by CombiMatrix or any of its Subsidiaries is or has become subject to any written notice or other communication, whether from a Governmental Body, citizens group, employee or otherwise, alleging material liability against CombiMatrix or any CombiMatrix Subsidiary on the basis that such real property is not in compliance with or has violated any Environmental Law relating to such property; and (ii) neither it nor any of its Subsidiaries has any unresolved material liability under any applicable Environmental Law.

(b) Notwithstanding any other provisions of this Agreement, the representations and warranties of this Section 2.14 are the sole and exclusive representations by CombiMatrix or any CombiMatrix Subsidiary with respect to compliance with any Environmental Laws.

2.15 Insurance .

(a) CombiMatrix has delivered to Invitae accurate and complete copies of all material insurance policies and all material self-insurance programs and arrangements relating to the business, assets, liabilities and operations of CombiMatrix and each CombiMatrix Subsidiary. Each of such insurance policies is in full force and effect and CombiMatrix and each CombiMatrix Subsidiary are in compliance with the terms thereof. Other than customary end of policy notifications from insurance carriers, since January 1, 2014, neither CombiMatrix nor any CombiMatrix Subsidiary has received any written notice or other communication 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. There is no pending workers' compensation or other claim under or based upon any insurance policy of CombiMatrix or any CombiMatrix Subsidiary. All information provided to insurance carriers (in applications and otherwise) on behalf of CombiMatrix and each CombiMatrix Subsidiary is accurate and complete in all material respects. CombiMatrix and each CombiMatrix Subsidiary have provided timely written notice to the appropriate insurance carrier(s) of each Legal Proceeding pending or threatened against CombiMatrix or any CombiMatrix Subsidiary, and no such carrier has issued a written denial of coverage or a reservation of rights with respect to any such Legal Proceeding, or informed CombiMatrix or any CombiMatrix Subsidiary in writing of its intent to do so.

(b) CombiMatrix has delivered to Invitae accurate and complete copies of the existing policies (primary and excess) of directors' and officers' liability insurance maintained by CombiMatrix and each CombiMatrix Subsidiary as of the date of this Agreement (the "*CombiMatrix D&O Policies*"). Section 2.15(b) of the CombiMatrix Disclosure Schedule accurately sets forth the most recent annual premiums paid by CombiMatrix and each CombiMatrix Subsidiary with respect to the CombiMatrix D&O Policies. All premiums for the CombiMatrix D&O Policies have been paid.

2.16 Legal Proceedings; Orders .

(a) Except as set forth in Section 2.16(a) of the CombiMatrix Disclosure Schedule, there is no pending Legal Proceeding, and, to the Knowledge of CombiMatrix, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves CombiMatrix or any of its Subsidiaries, any CombiMatrix Associate (in his or her capacity as such) or any of the material assets owned or used by CombiMatrix or its Subsidiaries; 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 CombiMatrix, 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 CombiMatrix or any CombiMatrix Subsidiary, or any of the material assets owned or used by CombiMatrix or any CombiMatrix Subsidiary is subject. To the Knowledge of CombiMatrix, no officer or other Key Employee of CombiMatrix or any CombiMatrix Subsidiary is subject to any order, writ, injunction, judgment or decree that prohibits such officer or other Key Employee from engaging in or continuing any conduct, activity or practice relating to the business of CombiMatrix or any CombiMatrix Subsidiary or to any material assets owned or used by CombiMatrix or any CombiMatrix Subsidiary.

2.17 Authority; Binding Nature of Agreement . CombiMatrix and each CombiMatrix Subsidiary has all necessary corporate power and authority to enter into and to perform its obligations under this Agreement. The CombiMatrix Board of Directors (at one or more meetings duly called and held) has: (a) determined that the Merger is advisable and fair to and in the best interests of CombiMatrix and its stockholders; (b) duly authorized and approved by all necessary corporate action, the execution, delivery and performance of this Agreement and the Contemplated Transactions, including the Merger; and (c) recommended adoption and approval of the Merger Proposal, including the adoption and approval of this Agreement and the Merger, by the holders of CombiMatrix Common Stock and directed that the Merger Proposal be submitted for consideration by CombiMatrix's stockholders in connection with the solicitation of the Required CombiMatrix Stockholder Vote. This Agreement has been duly executed and delivered by CombiMatrix and, assuming the due authorization, execution and delivery by Invitae, constitutes the legal, valid and binding obligation of CombiMatrix, enforceable against CombiMatrix in accordance with its terms, subject to: (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. Prior to the execution of the CombiMatrix Transaction Bonus Payout Agreements, the CombiMatrix Board of Directors approved the CombiMatrix Transaction Bonus Payout Agreements and the transactions contemplated thereby.

2.18 Inapplicability of Anti-takeover Statutes . The CombiMatrix Board of Directors 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. No other state takeover statute or similar Legal Requirement applies or purports to apply to the Merger, this Agreement, or any of the other Contemplated Transactions.

2.19 Vote Required . The affirmative vote of a majority of the shares of CombiMatrix Common Stock outstanding on the record date for the CombiMatrix Special Meeting and entitled to vote thereon (the “**Required CombiMatrix Stockholder Vote**”) is the only vote of the holders of any class or series of CombiMatrix Capital Stock necessary to adopt or approve the Merger Proposal.

2.20 Non-Contravention; Consents .

(a) Neither the execution, delivery or performance of this Agreement by CombiMatrix, nor the consummation of the Merger or any of the Contemplated Transactions, will: (i) violate or conflict with any provision of the certificate of incorporation or the bylaws of CombiMatrix; or (ii) constitute a material violation of, or be in conflict in any material respect with, any statute, judgment, decree, order, regulation or rule of any court or Governmental Authority applicable to CombiMatrix.

(b) No Consent of or Filing with any Governmental Authority is required for the execution and delivery by CombiMatrix of this Agreement or the consummation by CombiMatrix of the Contemplated Transactions, except for (i) the filing with the SEC of such reports under the Exchange Act and the Form S-4 Merger Registration Statement under the Securities Act as may be required in connection with this Agreement and the Contemplated Transactions, (ii) compliance with, and if applicable, the filing of a premerger notification and report form under the HSR Act, (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, and (iv) any filing with NASDAQ.

(c) Except (i) for any Consent set forth in Section 2.20(c) of the CombiMatrix Disclosure Schedule under any CombiMatrix Contract, (ii) the adoption and approval of the Merger Proposal by CombiMatrix’s stockholders, (iii) any Consents or Filings described in Section 2.20(b), and (iv) such Consents, orders and Filings as may be required under applicable federal and state securities laws, neither CombiMatrix nor any of its Subsidiaries was, is or will be required to make any Filing with or give any notice to, or to obtain any Consent from, any Person in connection with (x) the execution, delivery or performance of this Agreement or (y) the consummation of the Merger or any of the other Contemplated Transactions.

2.21 Bank Accounts; Receivables .

(a) Section 2.21(a) of the CombiMatrix Disclosure Schedule provides accurate information with respect to each account maintained by or for the benefit of CombiMatrix or any CombiMatrix Subsidiary at any bank or other financial institution, including the name of the bank or financial institution, the account number, the balance as of June 30, 2017 and the names of all individuals authorized to draw on or make withdrawals from such accounts.

(b) All existing accounts receivable of CombiMatrix or any CombiMatrix Subsidiary (including those accounts receivable reflected on the CombiMatrix Unaudited Interim Balance Sheet that have not yet been collected and those accounts receivable that have arisen since the date of the CombiMatrix Unaudited Interim Balance Sheet and have not yet been collected) (i) represent valid obligations of customers of CombiMatrix or any CombiMatrix Subsidiary arising from bona fide transactions entered into in the Ordinary Course of Business, and (ii) are current and are expected to be collected in full when due, without any counterclaim or set off, net of applicable reserves for bad debts on the CombiMatrix Unaudited Interim Balance Sheet. All deposits of CombiMatrix (including those set forth on the CombiMatrix Unaudited Interim Balance Sheet) which are individually more than \$10,000 or more than \$25,000 in the aggregate are fully refundable to CombiMatrix.

2.22 No Financial Advisor . Except as set forth in Section 2.22 of the CombiMatrix 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 CombiMatrix or any of its Subsidiaries.

2.23 Opinion of Financial Advisor . The CombiMatrix Board of Directors (in its capacity as such) has received an opinion of Torreya Partners LLC, financial advisor to CombiMatrix, to the effect that, as of the date of such opinion and based upon and subject to the various assumptions, qualifications and limitations set forth therein, the Exchange Ratio is fair to CombiMatrix from a financial point of view. Promptly following execution of this Agreement, CombiMatrix will furnish an accurate and complete copy of such opinion to Invitae.

2.24 Shell Company Status . CombiMatrix is not an issuer identified in Rule 144(i)(1) or of the Securities Act or a shell company as defined in Rule 12b-2 of the Exchange Act.

2.25 Transactions with Affiliates . Since the date of CombiMatrix's last proxy statement filed in 2017 with the SEC, no event has occurred that would be required to be reported by CombiMatrix pursuant to Item 404 of Regulation S-K promulgated by the SEC. Section 2.25 of the CombiMatrix Disclosure Schedule identifies each Person who is (or who may be deemed to be) an Affiliate of CombiMatrix as of the date of this Agreement.

2.26 Code of Ethics . CombiMatrix has adopted a code of ethics, as defined by Item 406(b) of Regulation S-K of the SEC, for senior financial officers, applicable to its principal executive officer, principal financial officer, controller or principal accounting officer, or persons performing similar functions. CombiMatrix has promptly disclosed any change in or waiver of CombiMatrix's code of ethics with respect to any such persons, as required by Section 406(b) of the Sarbanes-Oxley Act. To the Knowledge of CombiMatrix, there have been no violations of provisions of CombiMatrix's code of ethics by any such persons.

2.27 Disclosure . The information supplied by CombiMatrix and each CombiMatrix Subsidiary for inclusion in the Form S-4 Merger Registration Statement and Proxy Statement/Prospectus (including any CombiMatrix financials) will not, at the time that the Proxy Statement/Prospectus or any amendment or supplement thereto is filed with the SEC or is first mailed to the stockholders of CombiMatrix, at the time of the CombiMatrix Stockholders'

Meeting and at the Effective Time, (i) contain any untrue statement of material fact or (ii) omit to state any material fact necessary in order to make such statements, in the light of the circumstances under which such statements are made, not misleading. The information supplied by CombiMatrix and each CombiMatrix Subsidiary for inclusion in the Form S-4 Warrant Exchange Offer Registration Statement or in the other Offer Documents (including any CombiMatrix financials) will not, as of the date any Offer Document is first mailed to holders of CombiMatrix Series F Warrants and at the Closing, (i) contain any untrue statement of material fact or (ii) omit to state any material fact necessary in order to make such statements, in the light of the circumstances under which such statements are made, not misleading.

2.28 Exclusivity of Representations . Except as expressly set forth in this Section 2, neither CombiMatrix nor any Person on behalf of CombiMatrix has made, nor are any of them making, any representation or warranty, written or oral, express or implied, at law or in equity, including with respect to merchantability or fitness for any particular purpose, in respect of CombiMatrix or its business in connection with the Contemplated Transactions, including any representations or warranties about the accuracy or completeness of any information or documents previously provided (including with respect to any financial or other projections therein), and any other such representations and warranties are hereby expressly disclaimed.

Section 3. REPRESENTATIONS AND WARRANTIES OF INVITAE AND MERGER SUB

Invitae and Merger Sub represent and warrant to CombiMatrix as follows, except as set forth in the written disclosure schedule delivered by Invitae to CombiMatrix (the “*Invitae Disclosure Schedule*”). The Invitae Disclosure Schedule shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Section 3. The disclosures in any section or subsection of the Invitae Disclosure Schedule shall qualify other sections and subsections in this Section 3 to the extent it is reasonably clear from a reading of the disclosure that such disclosure is applicable to such other sections and subsections. The inclusion of any information in the Invitae Disclosure Schedule (or any update thereto) shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would result in an Invitae Material Adverse Effect, or is outside the Ordinary Course of Business.

3.1 Organization; Authority; Enforceability . Each of Invitae and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the laws of Delaware. All corporate action (including, with respect to Merger Sub, by its sole stockholder) required to be taken in order to authorize Invitae and Merger Sub to enter into this Agreement has been taken. All action on the part of the officers of Invitae and Merger Sub necessary for the execution and delivery of this Agreement and the performance of all obligations of Invitae and Merger Sub under this Agreement has been taken (other than, with respect to the consummation of the Merger, the filing of a certificate of merger with the Secretary of State of the State of Delaware). This Agreement has been duly executed and delivered by Invitae and Merger Sub and constitutes the legal, valid and binding obligation of Invitae and Merger Sub, enforceable against Invitae and Merger Sub in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors’ rights generally, or (ii) as limited

by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies. Invitae and Merger Sub are each qualified to do business as a foreign corporation, and is in good standing, under the laws of all jurisdictions where the nature of its business requires such qualification other than in jurisdictions where the failure to be so qualified individually or in the aggregate would not be reasonably expected to have an Invitae Material Adverse Effect.

3.2 Non-Contravention; Governmental Consents .

(a) Neither the execution, delivery or performance of this Agreement by Invitae or Merger Sub, nor the consummation of the Merger or any of the Contemplated Transactions, will: (i) violate or conflict with any provision of the respective certificates of incorporation or the bylaws of Invitae or Merger Sub; or (ii) to the Knowledge of Invitae, constitute a material violation of, or be in conflict in any material respect with, any statute, judgment, decree, order, regulation or rule of any court or Governmental Authority applicable to Invitae or Merger Sub.

(b) No Consent of or Filing with any Governmental Authority is required for the execution and delivery by Invitae or Merger Sub of this Agreement or the consummation by Invitae or Merger Sub of the Contemplated Transactions, except for (i) the filing with the SEC of the Form S-4 Merger Registration Statement, the Form S-4 Warrant Exchange Offer Registration Statement and any other applicable Offer Documents, and such reports under the Exchange Act and under the Securities Act as may be required in connection with this Agreement and the Contemplated Transactions, (ii) compliance with and, if applicable, the filing of a premerger notification and report form under the HSR Act, (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, (iv) the filing with The New York Stock Exchange (the “*NYSE*”) in respect of the shares of Invitae Common Stock issuable pursuant to this Agreement (with respect to both the Merger and the Warrant Exchange Offer) and (v) such Consents, orders and Filings as may be required under applicable federal or state securities laws.

3.3 SEC Documents.

(a) Invitae has filed all reports required to be filed by it with the SEC since January 1, 2017, and Invitae has made available to CombiMatrix (including through the SEC’s EDGAR database) true, correct and complete copies of all such reports (collectively, the “*Invitae SEC Documents*”). As of their respective dates, each of the Invitae SEC Documents complied in all material respects with the applicable requirements of the Exchange Act, and none of the Invitae SEC Documents, as of their respective dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. All statements, reports, schedules, forms and other documents required to have been filed by Invitae or its officers with the SEC have been so filed on a timely basis. The certifications and statements required by (A) Rule 13a-14 under the Exchange Act and (B) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act) relating to the Invitae SEC Documents (collectively, the “*Invitae Certifications*”) are accurate and complete and comply as to form and content with all applicable Legal Requirements. As used in this Section 3, the term “file” and variations thereof shall be broadly construed to include any manner in which a document or information is furnished, supplied or otherwise made available to the SEC.

(b) Each of the consolidated financial statements (including, in each case, any notes thereto) contained in the Invitae SEC Documents was prepared in accordance with GAAP throughout the periods indicated (except as may be indicated in the notes thereto and except that financial statements included with interim reports do not contain all notes to such financial statements) and each fairly presented in all material respects the consolidated financial position, results of operations and changes in stockholders' equity and cash flows of Invitae and its consolidated subsidiaries as at the respective dates thereof and for the respective periods indicated therein (subject, in the case of unaudited statements, to normal year-end adjustments which are not expected, individually or in the aggregate, to be material). Other than as expressly disclosed in the Invitae SEC Documents filed prior to the date of this Agreement, there has been no material change in Invitae's accounting methods or principles prior to the date of this Agreement that would be required to be disclosed in Invitae's financial statements in accordance with GAAP. The books of account and other financial records of Invitae are true and complete in all material respects.

(c) Invitae is in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act and the applicable listing and governance rules and regulations of The NYSE.

(d) Invitae's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by Invitae in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information is accumulated and communicated to Invitae's management as appropriate to allow timely decisions regarding required disclosure and to make the Invitae Certifications.

3.4 Compliance; Permits . Invitae is in compliance in all material respects with all applicable Legal Requirements. Except for that certain Loan and Security Agreement dated as of March 15, 2017 between Oxford Capital, LLC and Invitae (as it may be amended from time to time), and the condition to closing contemplated by Section 7.8 (*i.e.* , the Oxford Consent), there is no agreement, judgment, injunction, order or decree binding upon Invitae which (i) may have an adverse effect on Invitae's ability to comply with or perform any covenant or obligation under this Agreement, or (ii) may have the effect of preventing, delaying, making illegal or otherwise interfering with the Merger or any of the other Contemplated Transactions. Invitae holds all required Governmental Authorizations issuable by any Governmental Body necessary for the conduct of the business of Invitae as currently conducted (the "**Invitae Regulatory Permits**"), except where the absence of any Governmental Authorization would not be reasonably expected to have an Invitae Material Adverse Effect, and, to the Knowledge of Invitae, no such Invitae Regulatory Permit has been (i) revoked, withdrawn, suspended, cancelled or terminated or (ii) modified in any adverse manner, other than immaterial adverse modifications.

3.5 No Financial Advisor . 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 Invitae.

3.6 Legal Proceedings; Orders . There is no pending Legal Proceeding, and, to the Knowledge of Invitae, no Person has threatened in writing to commence any Legal Proceeding, 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.

3.7 Shares of Common Stock . The shares of Invitae Common Stock to be issued and delivered to the CombiMatrix Stockholders as the Merger Consideration in accordance with this Agreement, when so issued and delivered, have been or will be, when issued, (i) duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights created by statute, Invitae's certificate of incorporation or bylaws or any agreement to which Invitae is a party, and (ii) issued in compliance with applicable Legal Requirements, including securities laws, and all material requirements set forth in applicable Contracts.

3.8 No Vote of Invitae Stockholders . Except for the adoption of this Agreement by Invitae as the sole stockholder of Merger Sub, no vote of the stockholders of Invitae is required by any Legal Requirement or the certificate of incorporation or bylaws of Invitae in order for Invitae to consummate the Merger or the Warrant Exchange Offer.

3.9 Lack of Ownership of Shares . As of the date of this Agreement, neither Invitae nor any of its Subsidiaries owns, directly or indirectly, any securities of CombiMatrix.

3.10 Merger Sub Capitalization . The authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value \$0.001 per share, all of which are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Invitae. Merger Sub was formed solely for the purpose of engaging in the Contemplated Transactions, and it has not conducted any business prior to the date of this Agreement and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement, the Merger and the other actions contemplated by this Agreement.

3.11 Disclosure . The information supplied by Invitae for inclusion in the Form S-4 Merger Registration Statement and Proxy Statement/Prospectus (including any Invitae financials) will not, at the time that the Proxy Statement/Prospectus or any amendment or supplement thereto is filed with the SEC or is first mailed to the stockholders of CombiMatrix, at the time of the CombiMatrix Stockholders' Meeting and at the Effective Time, (i) contain any untrue statement of material fact or (ii) omit to state any material fact necessary in order to make such statements, in the light of the circumstances under which such statements are made, not misleading. The information supplied by Invitae for inclusion in the Form S-4 Warrant Exchange Offer Registration Statement or in the other Offer Documents (including any Invitae financials) will not, as of the date any Offer Document is first mailed to holders of CombiMatrix Series F Warrants and at the Closing, (i) contain any untrue statement of material fact or (ii) omit to state any material fact necessary in order to make such statements, in the light of the circumstances under which such statements are made, not misleading.

3.12 Exclusivity of Representations . Except as expressly set forth in this Section 3, neither Invitae, Merger Sub, nor any Person on behalf of Invitae or Merger Sub has made, nor are any of them making, any representation or warranty, written or oral, express or implied, at law or in equity, including with respect to merchantability or fitness for any particular purpose, in respect of Invitae or its business in connection with the Contemplated Transactions, including any representations or warranties about the accuracy or completeness of any information or documents previously provided (including with respect to any financial or other projections therein), and any other such representations and warranties are hereby expressly disclaimed.

Section 4. CERTAIN COVENANTS OF THE PARTIES

4.1 Access and Investigation .

(a) Subject to the terms of the Confidentiality Agreement which the Parties agree will continue in full force following the date of this Agreement, during the period commencing on the date of this Agreement and ending at the Effective Time (the “**Pre-Closing Period**”), upon reasonable notice CombiMatrix shall, and shall use commercially reasonable efforts to cause CombiMatrix’s Representatives to: (a) provide Invitae and Invitae’s Representatives with reasonable access during normal business hours to CombiMatrix’s Representatives, personnel and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to CombiMatrix and its Subsidiaries; (b) provide Invitae and Invitae’s Representatives with such copies of the existing books, records, Tax Returns, work papers, product, technology and service data, and other documents and information relating to CombiMatrix and its Subsidiaries, and with such additional financial, operating and other data and information regarding CombiMatrix and its Subsidiaries as Invitae may reasonably request; and (c) permit Invitae’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 CombiMatrix responsible for CombiMatrix’s financial statements and the internal controls of CombiMatrix to discuss such matters as Invitae deem necessary or appropriate in order to enable Invitae 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, CombiMatrix shall promptly make available to Invitae copies of:

(i) the unaudited monthly consolidated balance sheets of CombiMatrix as of the end of each calendar month and the related unaudited monthly consolidated statements of operations, statements of stockholders’ equity and statements of cash flows for such calendar month, which shall be delivered within 20 days after the end of such calendar month, or such longer periods as Invitae may agree to in writing;

(ii) all material operating and financial reports prepared by CombiMatrix 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 CombiMatrix to its stockholders;

(iv) any intended filing under the Exchange Act, which shall be delivered in the proposed form for filing at least two (2) Business Days before the proposed date of filing (to the extent practicable);

(v) any material notice, document or other communication sent by or on behalf of CombiMatrix to any party to any CombiMatrix Material Contract or sent to CombiMatrix by any party to any CombiMatrix Material Contract (other than any communication that relates solely to routine commercial transactions between CombiMatrix and the other party to any such CombiMatrix Material Contract, and that is of the type sent in the Ordinary Course of Business and consistent with past practices);

(vi) any notice, report or other document filed with or otherwise furnished, submitted or sent to any Governmental Body on behalf of CombiMatrix in connection with the Merger or any of the Contemplated Transactions;

(vii) any non-privileged notice, document or other communication sent by or on behalf of, or sent to, CombiMatrix relating to any pending or threatened Legal Proceeding involving or affecting CombiMatrix; and

(viii) any material notice, report or other document received by CombiMatrix from any Governmental Body.

Notwithstanding the foregoing, CombiMatrix may restrict the foregoing access to the extent that (x) any Legal Requirement applicable to CombiMatrix requires CombiMatrix to restrict or prohibit access to any of CombiMatrix's properties or information or (y) such access or disclosure would jeopardize the attorney-client privilege of such information.

(b) Invitae and Invitae's Representatives, respectively, will not use any information obtained pursuant to Section 4.1(a) (to which it was not entitled under any Legal Requirement or any agreement other than this Agreement) for any purpose unrelated (i) to the consummation of the Contemplated Transactions or (ii) the matters contemplated by this Agreement, and will hold all information and documents obtained pursuant to Section 4.1(a) subject to the terms of the Confidentiality Agreement.

4.2 Operation of CombiMatrix's Business .

(a) During the Pre-Closing Period: (i) CombiMatrix shall conduct its business and operations solely: (A) in the Ordinary Course of Business; and (B) in compliance with all applicable Legal Requirements, Health Laws, Information Privacy and Security Laws, Trade Control Laws, CombiMatrix Regulatory Permits, CAP standards of accreditation, Payment Programs, and the requirements of all Contracts that constitute CombiMatrix Material Contracts; (ii) CombiMatrix shall continue to pay outstanding accounts payable and other current Liabilities (including payroll) when due and payable; and (iii) CombiMatrix shall promptly notify Invitae 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; (B) any Legal Proceeding against, relating to, involving or otherwise affecting CombiMatrix that is commenced, or, to the Knowledge of CombiMatrix, threatened against, CombiMatrix after the date of this

Agreement; and (C) any notice or other communication from any Person alleging that any payment or other obligation is or will be owed to such Person at any time before or after the date of this Agreement, except for invoices or other communications related to agreements or dealings in the Ordinary Course of Business or payments or obligations identified in this Agreement, including the CombiMatrix Disclosure Schedule. CombiMatrix shall, acting in the Ordinary Course of Business, use commercially reasonable efforts to preserve intact the Acquired Corporations' current business organization, including keeping available the services of current officers and key employees, and use commercially reasonable efforts to maintain their respective relations and good will with Governmental Bodies and all significant suppliers, customers, licensors, licensees, distributors and lessors and other significant business relations.

(b) During the Pre-Closing Period, CombiMatrix shall promptly notify Invitae in writing, by delivering an updated CombiMatrix Disclosure Schedule, of: (i) the discovery by CombiMatrix of any event, condition, fact or circumstance that occurred or existed on or prior to the date of this Agreement and that causes or constitutes a material inaccuracy in any representation or warranty made by CombiMatrix in this Agreement in a manner that would cause the conditions set forth in Section 7.1 not to be satisfied; (ii) any event, condition, fact or circumstance that occurs, arises or exists after the date of this Agreement and that would cause or constitute a material inaccuracy in any representation or warranty made by CombiMatrix in this Agreement in a manner that would cause the conditions set forth in Section 7.1 not to be satisfied if: (A) such representation or warranty had been made as of the time of the occurrence, existence or discovery of such event, condition, fact or circumstance; or (B) such event, condition, fact or circumstance had occurred, arisen or existed on or prior to the date of this Agreement; (iii) any material breach of any covenant or obligation of CombiMatrix; and (iv) any event, condition, fact or circumstance that would reasonably be expected to make the timely satisfaction of any of the conditions set forth in Section 6, Section 7 and Section 8 impossible or materially less likely. Without limiting the generality of the foregoing, CombiMatrix shall promptly advise Invitae in writing of any Legal Proceeding or material, written claim threatened, commenced or asserted against or with respect to, or otherwise affecting, CombiMatrix or, to the Knowledge of CombiMatrix, any director, officer or Key Employee of CombiMatrix. No notification given to Invitae (including pursuant to this Section 4.2(b)) shall change, limit or otherwise affect any of the representations, warranties, covenants or obligations of CombiMatrix or any of its Subsidiaries contained in this Agreement or the CombiMatrix Disclosure Schedule (including for purposes of Section 7.1).

4.3 Negative Obligations .

Except (i) as expressly contemplated or permitted by this Agreement or (ii) with the prior written consent of Invitae, at all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Section 9 and the Effective Time, CombiMatrix shall not, nor shall it cause or permit any of its Subsidiaries to, do any of the following:

(a) declare, accrue, set aside or pay any dividend or made any other distribution in respect of any shares of its capital stock; or repurchase, redeem or otherwise reacquire any shares of its capital stock or other securities (except for shares of CombiMatrix Common Stock from terminated employees of CombiMatrix);

(b) sell, issue or grant, or authorize the issuance of: (i) any capital stock or other security (except for shares of CombiMatrix Common Stock issued upon the valid exercise of CombiMatrix Options, CombiMatrix RSUs or CombiMatrix Warrants outstanding as of the date of this Agreement); (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;

(c) amend its certificate of incorporation, bylaws or other charter or organizational documents, 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 except as related to the Contemplated Transactions;

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

(e) lend money to any Person; other than in the Ordinary Course of Business, 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; or, other than in the Ordinary Course of Business, make any capital expenditure or commitment;

(f) adopt, establish or enter into any CombiMatrix Employee Plan; cause or permit any CombiMatrix Employee Plan to be amended other than as required by law or in order to make amendments for the purposes of compliance with Section 409A of the Code; except as set forth on Schedule 4.3(f), pay any bonus or make any 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 pay or increase the severance or change of control benefits offered to any current or new employee or consultant;

(g) enter into any material transaction outside the Ordinary Course of Business;

(h) purchase, lease, license or otherwise acquire, or sell, lease, license or otherwise dispose of, any asset, right or property, or grant any Encumbrance with respect to any asset, right or property, except in the Ordinary Course of Business consistent with past practices;

(i) make, change or revoke any material Tax election; file any material amendment to any Tax Return; adopt or change any accounting method in respect of Taxes; change any annual Tax accounting period; enter into any Tax allocation agreement, Tax sharing agreement or Tax indemnity agreement, other than commercial contracts entered into in the Ordinary Course of Business with vendors, customers or landlords; enter into any closing agreement with respect to any Tax; settle or compromise any claim, notice, audit report or assessment in respect of material Taxes; apply for or enter into any ruling from any Tax authority with respect to Taxes; surrender any right to claim a material Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(j) without the prior written consent of Invitae which shall not be unreasonably withheld, delayed or conditioned, enter into, amend or terminate any CombiMatrix Material Contract;

(k) without the prior written consent of Invitae which shall not be unreasonably withheld, delayed or conditioned, (i) materially change pricing, royalties or other payments set or charged to its customers or licensees, or (ii) materially increase pricing, royalties or other payments set or charged by vendors or persons who have licensed Intellectual Property to it; or

(l) agree, resolve or commit to do any of the foregoing.

4.4 No Solicitation .

(a) CombiMatrix agrees that neither it nor any of its Subsidiaries shall, nor shall it nor any of its Subsidiaries authorize or permit any of the Representatives retained by it or any of its Subsidiaries to, directly or indirectly: (i) solicit, initiate, respond to or take any action to facilitate or encourage any inquiries or the communication, making, submission or announcement of any Acquisition Proposal or Acquisition Inquiry or take any action that could reasonably be expected to lead to an Acquisition Proposal or Acquisition Inquiry; (ii) enter into or participate in any discussions or negotiations with any Person with respect to any Acquisition Proposal or Acquisition Inquiry; (iii) furnish any information regarding CombiMatrix or any of its Subsidiaries to any Person in connection with, in response to, relating to or for the purpose of assisting with or facilitating an Acquisition Proposal or Acquisition Inquiry; (iv) approve, endorse or recommend any Acquisition Proposal (subject to Section 5.2); (v) execute or enter into any letter of intent or similar document or any Contract contemplating or otherwise relating to any Acquisition Transaction (an “**Acquisition Agreement**”); or (vi) grant any waiver or release under any confidentiality, standstill or similar agreement (other than to Invitae) .

(b) Notwithstanding anything contained in Section 4.4(a), prior to the Merger Proposal having been adopted and approved at the CombiMatrix Stockholders’ Meeting (or any adjournment or postponement thereof) by the Required CombiMatrix Stockholder Vote, (i) CombiMatrix may enter into discussions or negotiations with any Person that has made (and not withdrawn) a bona fide, unsolicited, Acquisition Proposal, which CombiMatrix’s Board of Directors determines in good faith, after consultation with its independent financial advisor, if any, and its outside legal counsel, constitutes, or would reasonably be expected to result in, a Superior Offer, and (ii) thereafter furnish to such Person non-public information regarding CombiMatrix pursuant to an executed confidentiality agreement containing provisions (including nondisclosure provisions, use restrictions, non-solicitation provisions, no-hire provisions and “standstill” provisions) at least as favorable to CombiMatrix as those contained in the Confidentiality Agreement, but in each case of the foregoing clauses (i) and (ii), only if: (A) neither CombiMatrix nor any Representative of CombiMatrix has breached this Section 4.4; (B) the CombiMatrix Board of Directors determines in good faith based on the advice of outside legal counsel that the failure to take such action would reasonably be expected to result in a breach of the fiduciary duties of the CombiMatrix Board of Directors under applicable Legal Requirements; (C) at least five (5) Business Days prior to furnishing any such non-public information to, or entering into discussions with, such Person, CombiMatrix gives Invitae written notice of the identity of such Person, the terms and conditions of any proposals or offers (including, if applicable, copies of any written

requests, proposals or offers, including proposed agreements) made thereby, and CombiMatrix's intention to furnish nonpublic information to, or enter into discussions with, such Person; and (D) at least five (5) Business Days prior to furnishing any such non-public information to such Person, CombiMatrix furnishes such non-public information to Invitae (to the extent such non-public information has not been previously furnished by CombiMatrix to Invitae). Without limiting the generality of the foregoing, CombiMatrix acknowledges and agrees that, in the event any CombiMatrix Representative (whether or not such Representative is purporting to act on behalf of CombiMatrix) takes any action that, if taken by CombiMatrix, would constitute a breach of this Section 4.4 by CombiMatrix, the taking of such action by such Representative shall be deemed to constitute a breach of this Section 4.4 by CombiMatrix for purposes of this Agreement.

(c) If CombiMatrix or any CombiMatrix Representative receives an Acquisition Proposal or Acquisition Inquiry at any time during the Pre-Closing Period, then CombiMatrix shall promptly (and in no event later than twenty-four (24) hours after CombiMatrix becomes aware of such Acquisition Proposal or Acquisition Inquiry) advise Invitae orally and in writing of such Acquisition Proposal or Acquisition Inquiry (including the identity of the Person making or submitting such Acquisition Proposal or Acquisition Inquiry, the terms thereof, and any written materials submitted therewith). CombiMatrix shall keep Invitae fully informed, on a current basis, in all material respects with respect to the status and terms of any such Acquisition Proposal or Acquisition Inquiry and any modification or proposed modification thereto, and shall deliver copies of any written materials submitted therewith. In addition to the foregoing, CombiMatrix shall provide Invitae with at least five (5) Business Days' written notice of a meeting of its board of directors (or any committee thereof) at which its board of directors (or any committee thereof) is reasonably expected to consider an Acquisition Proposal or Acquisition Inquiry CombiMatrix has received.

(d) CombiMatrix shall and shall cause its Representatives to cease immediately and cause to be terminated, and shall not authorize or knowingly permit any of its Representatives to continue, any and all existing activities, discussions or negotiations, if any, with any third party conducted prior to the date of this Agreement with respect to any Acquisition Proposal and shall use its reasonable best efforts to cause any such third party (or its Representatives) in possession of non-public information in respect of CombiMatrix or its Subsidiaries that was furnished by or on behalf of CombiMatrix or its Subsidiaries to return or destroy (and confirm destruction of) all such information.

Section 5. ADDITIONAL AGREEMENTS OF THE PARTIES

5.1 Registration Statement; Proxy Statement/Prospectus; Warrant Exchange Offer.

(a) As promptly as practicable after the date of this Agreement, the Parties shall prepare and cause to be filed with the SEC the Proxy Statement/Prospectus and, Invitae shall prepare and cause to be filed with the SEC the Form S-4 Merger Registration Statement (in which the Proxy Statement/Prospectus will be included as a prospectus). Invitae covenants to CombiMatrix that the Proxy Statement/Prospectus, including any pro forma financial statements included therein, will not, at the time that the Proxy Statement/Prospectus or any amendment or supplement thereto is filed with the SEC or is first mailed to the stockholders of CombiMatrix, at

the time of the CombiMatrix Stockholders' Meeting and at the Effective Time, 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 made therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, Invitae makes no covenant, representation or warranty with respect to statements made in the Proxy Statement/Prospectus by CombiMatrix or based on information furnished by CombiMatrix for inclusion therein. Each of the Parties shall use commercially reasonable efforts to cause the Form S-4 Merger Registration Statement and the Proxy Statement/Prospectus to comply with the applicable rules and regulations promulgated by the SEC, to respond promptly to any comments of the SEC or its staff and to have the Form S-4 Merger Registration Statement declared effective under the Securities Act as promptly as practicable after it is filed with the SEC. Prior to the Form S-4 Merger Registration Statement being declared effective, (1) CombiMatrix shall execute and deliver to Stradling Yocca Carlson & Rauth, P.C. ("**Stradling**") and to Pillsbury Winthrop Shaw Pittman LLP ("**Pillsbury**") the applicable "Tax Representation Letter" referenced in Section 5.9(c); and (2) Invitae shall execute and deliver to Pillsbury and to Stradling the applicable "Tax Representation Letter" referenced in Section 5.9(c). Following the delivery of the Tax Representation Letters pursuant to the preceding sentence, (A) CombiMatrix shall use its commercially reasonable efforts to cause Stradling to deliver to it a tax opinion satisfying the requirements of Item 601(b)(8) of Regulation S-K under the Securities Act; and (B) Invitae shall use its commercially reasonable efforts to cause Pillsbury to deliver to it a tax opinion satisfying the requirements of Item 601(b)(8) of Regulation S-K under the Securities Act. In rendering such opinions, each of such counsel shall be entitled to rely on the Tax Representation Letters referred to in this Section 5.1(a) and Section 5.9(c). CombiMatrix shall use commercially reasonable efforts to cause the Proxy Statement/Prospectus to be mailed to CombiMatrix's stockholders as promptly as practicable after the Form S-4 Merger Registration Statement is declared effective under the Securities Act. Each Party shall promptly furnish to the other Party all information concerning such Party and such Party's Subsidiaries and such Party's stockholders that may be required or reasonably requested in connection with any action contemplated by this Section 5.1(a). If any event relating to CombiMatrix occurs, or if CombiMatrix becomes aware of any information, that should be disclosed in an amendment or supplement to the Form S-4 Merger Registration Statement or the Proxy Statement/Prospectus, then CombiMatrix shall promptly inform Invitae thereof and shall cooperate fully with Invitae in filing such amendment or supplement with the SEC and, if appropriate, in mailing such amendment or supplement to CombiMatrix's stockholders.

(b) The Parties shall use their commercially reasonable efforts to (i) do all things necessary or desirable to allow Invitae to commence an exchange offer (the "**Warrant Exchange Offer**") whereby holders of CombiMatrix Series F Warrants may elect to exchange outstanding CombiMatrix Series F Warrants for shares of Invitae Common Stock on a basis determined by Invitae in its sole discretion, (ii) cooperate in securing the agreement of holders of CombiMatrix Series F Warrants to participate in the Warrant Exchange Offer such that at least 90% of the CombiMatrix Series F Warrants outstanding immediately prior to the date of this Agreement are exchanged in the Warrant Exchange Offer (such threshold of exchange or exercise, the "**Minimum Warrant Exchange Participation**") and (iii) do all things necessary or desirable to allow Invitae to consummate the Warrant Exchange Offer at or immediately prior to the Closing assuming the Minimum Warrant Exchange Participation is met and that the Closing is otherwise ready to occur (including because the conditions set forth in Section 6, Section 7, and Section 8 have been satisfied or waived). Notwithstanding the foregoing, CombiMatrix shall have no

obligations under this Section 5.1(b) to the extent that Invitae has not offered shares of Invitae Common Stock with a value (based on the Invitae Trailing Average Share Value) of at least \$2.90 (rounded to the nearest cent) per CombiMatrix Series F Warrant in the Warrant Exchange Offer. In connection with the Warrant Exchange Offer, the Parties shall cooperate with each other regarding, and prepare, offering documents, which the Parties will cause to comply as to form in all material respects with the applicable provisions of the Securities Act and the Exchange Act, for the purpose of effecting and consummating the Warrant Exchange Offer (the “**Offer Documents**”). The Offer Documents shall include (1) an Offer to Exchange document describing the material terms of the Warrant Exchange Offer, (2) a Statement on Schedule TO with respect to the Warrant Exchange Offer, if required, (3) a registration statement on Form S-4 registering the Warrant Exchange Offer (the “**Form S-4 Warrant Exchange Offer Registration Statement**”), (4) a statement by the CombiMatrix Board describing the CombiMatrix Board Recommendation and the Minimum Warrant Exchange Participation, including that the Minimum Warrant Exchange Participation is a condition to the obligations of Invitae and Merger Sub to effect the Merger, and (5) all ancillary documents related to the Warrant Exchange Offer, including exhibits, press releases, letters of transmittal, notices and announcements. Invitae covenants to CombiMatrix that the Offer Documents, including any pro forma financial statements included therein, will not, as of the date any Offer Document is first mailed to holders of CombiMatrix Series F Warrants and at the Closing, 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 made therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, Invitae makes no covenant, representation or warranty with respect to statements made in any Offer Document by CombiMatrix or based on information furnished by CombiMatrix for inclusion therein. Each of the Parties shall use commercially reasonable efforts to cause the Form S-4 Warrant Exchange Offer Registration and the other Offer Documents to comply with the applicable rules and regulations promulgated by the SEC, and to respond promptly to any comments of the SEC or its staff. Invitae shall, substantially contemporaneously with, or as promptly as practicable after, the filing of the Form S-4 Merger Registration Statement, file with the SEC the Form S-4 Warrant Exchange Offer Registration Statement and the Parties shall use commercially reasonable efforts to cause the Form S-4 Warrant Exchange Offer Registration Statement to be declared effective by the SEC so as to permit the Warrant Exchange Offer to be conducted in a timely manner and consistent with applicable regulations and requirements under securities laws, including the Exchange Act. Prior to the Form S-4 Warrant Exchange Offer Registration Statement being declared effective, (1) CombiMatrix shall execute and deliver to Stradling and to Pillsbury the applicable “Tax Representation Letter” referenced in Section 5.9(c); and (2) Invitae shall execute and deliver to Pillsbury and to Stradling the applicable “Tax Representation Letter” referenced in Section 5.9(c). Following the delivery of the Tax Representation Letters pursuant to the preceding sentence, (A) CombiMatrix shall use its commercially reasonable efforts to cause Stradling to deliver to it a tax opinion satisfying the requirements of Item 601(b)(8) of Regulation S-K under the Securities Act; and (B) Invitae shall use its commercially reasonable efforts to cause Pillsbury to deliver to it a tax opinion satisfying the requirements of Item 601(b)(8) of Regulation S-K under the Securities Act. In rendering such opinions, each of such counsel shall be entitled to rely on the Tax Representation Letters referred to in this Section 5.1(b) and Section 5.9(c). When appropriate after the Form S-4 Warrant Exchange Offer Registration Statement becomes effective (*i.e.* , so as to permit the Warrant Exchange Offer to be conducted in a timely manner and consistent with applicable regulations and

requirements under securities laws, including the Exchange Act), the Parties shall cause the Offer Documents to be mailed to the holders of the CombiMatrix Series F Warrants. Each Party shall promptly furnish to the other Party all information concerning such Party and such Party's Subsidiaries and such Party's stockholders that may be required or reasonably requested in connection with any action contemplated by this Section 5.1(b). If any event relating to CombiMatrix occurs, or if CombiMatrix becomes aware of any information, that should be disclosed in an amendment or supplement to the Form S-4 Warrant Exchange Offer Registration Statement or any other Offer Document, then CombiMatrix shall promptly inform Invitae thereof and shall cooperate fully with Invitae in filing such amendment or supplement with the SEC and, if appropriate, in mailing such amendment or supplement to the holders of the CombiMatrix Series F Warrants.

(c) Prior to the Effective Time, Invitae shall use commercially reasonable efforts to obtain all regulatory approvals needed to ensure that the Invitae Common Stock to be issued in the Merger or the Warrant Exchange Offer (to the extent required) shall be registered or qualified or exempt from registration or qualification under the securities law of every applicable jurisdiction of the United States; *provided, however*, that Invitae shall not be required: (i) to qualify to do business as a foreign corporation in any jurisdiction in which it is not now qualified; or (ii) to file a general consent to service of process in any jurisdiction.

(d) CombiMatrix shall reasonably cooperate with Invitae and provide, and require its Representatives, advisors, accountants and attorneys to provide, Invitae and its Representatives, advisors, accountants and attorneys, with all true, correct and complete information regarding CombiMatrix that is required to be included in any Registration Statement or reasonably requested from CombiMatrix to be included in any Registration Statement. Without limiting the foregoing, CombiMatrix shall use commercially reasonable efforts to cause to be delivered to Invitae a consent of, and to the extent reasonably requested by Invitae's independent accounting firm a letter confirming certain CombiMatrix financial information from, CombiMatrix's independent accounting firm, dated no more than two (2) Business Days before the date(s) on which, as applicable, the Form S-4 Merger Registration Statement or the Form S-4 Warrant Exchange Offer Registration Statement becomes effective (and reasonably satisfactory in form and substance to Invitae), that are customary in scope and substance for such consents and letters delivered by independent public accountants in connection with registration statements similar to the Registration Statements.

5.2 CombiMatrix Stockholders' Meeting .

(a) CombiMatrix shall take all action necessary under applicable Legal Requirements to call, give notice of and hold a meeting of the holders of CombiMatrix Common Stock to vote on the Merger Proposal and, if required in accordance with Section 14A of the Exchange Act and the applicable SEC rules issued thereunder, seek a non-binding, advisory vote of the CombiMatrix stockholders to approve certain compensation that may become payable to CombiMatrix's named executive officers in connection with the completion of the Merger (such meeting, the "***CombiMatrix Stockholders' Meeting***"). The CombiMatrix Stockholders' Meeting shall be held as promptly as practicable after the Form S-4 Merger Registration Statement is declared effective under the Securities Act. CombiMatrix shall take reasonable measures to ensure that all proxies solicited in connection with the CombiMatrix Stockholders' Meeting are solicited in compliance with all applicable Legal Requirements.

(b) CombiMatrix agrees that, subject to Section 5.2(c): (i) CombiMatrix's Board of Directors shall recommend that the holders of CombiMatrix Capital Stock vote to adopt and approve the Merger Proposal and shall use commercially reasonable efforts to solicit such approval within the timeframe set forth in Section 5.2(a) above, (ii) the Proxy Statement/Prospectus shall include a statement to the effect that the CombiMatrix Board of Directors has determined that the Merger is advisable and fair to, and in the best interests of, CombiMatrix and its stockholders, has deemed advisable and approved this Agreement, the Merger and the other actions contemplated by this Agreement, and recommends that CombiMatrix's stockholders vote to adopt and approve the Merger Proposal (the "**CombiMatrix Board Recommendation**"); and (iii) the CombiMatrix Board Recommendation shall not be withdrawn or modified in a manner adverse to Invitae, and no resolution by the CombiMatrix Board of Directors or any committee thereof to withdraw or modify the CombiMatrix Board Recommendation in a manner adverse to Invitae, shall be adopted or proposed.

(c) Notwithstanding anything to the contrary contained in Section 5.2(b), at any time prior to the Merger Proposal having been adopted and approved at the CombiMatrix Stockholders' Meeting (or any adjournment or postponement thereof) by the Required CombiMatrix Stockholder Vote, CombiMatrix's Board of Directors may withhold, amend, withdraw or modify the CombiMatrix Board Recommendation in a manner adverse to Invitae or recommend any Acquisition Transaction (collectively a "**CombiMatrix Board Adverse Recommendation Change**") if, but only if, CombiMatrix's Board of Directors determines in good faith, based on such matters as it deems relevant following consultation with its outside legal counsel, that the failure to withhold, amend, withdraw or modify such recommendation would result in a breach of its fiduciary duties under applicable Legal Requirements; *provided*, that Invitae receives written notice from CombiMatrix confirming that CombiMatrix's Board of Directors intends to change its recommendation at least five (5) Business Days in advance of the CombiMatrix Board Recommendation being withdrawn, withheld, amended or modified in a manner adverse to Invitae. Such notice shall describe in reasonable details the reasons for such intention and, if such reasons are related to a Superior Offer, then also specifying the material terms and conditions of such Superior Offer, including the identity of the Person making such offer (and attaching the most current and complete version of any written agreement or other document relating thereto).

(d) CombiMatrix's obligation to call, give notice of and hold the CombiMatrix Stockholders' Meeting in accordance with Section 5.2(a) shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission of any Superior Offer or Acquisition Proposal, or by any withdrawal or modification of the CombiMatrix Board Recommendation.

(e) Nothing contained in this Agreement shall prohibit CombiMatrix or its Board of Directors from (i) taking and disclosing to the stockholders of CombiMatrix a position as contemplated by Rule 14e-2(a) under the Exchange Act or complying with the provisions of Rule 14d-9 under the Exchange Act (other than Rule 14d-9(f) under the Exchange Act), (ii) making any disclosure to the stockholders of CombiMatrix if the CombiMatrix Board of Directors determines

in good faith, after consultation with its outside legal counsel, that the failure to make such disclosure would be inconsistent with its fiduciary duties to the stockholders of CombiMatrix under applicable Legal Requirements, and (iii) making a “stop, look and listen” communication to the stockholders of CombiMatrix pursuant to Rule 14d-9(f) under the Exchange Act, *provided, however*, that (A) in the case of each of the foregoing clauses (i) and (ii), any such disclosure or public statement shall be deemed to be a CombiMatrix Board Adverse Recommendation Change subject to the terms and conditions of this Agreement unless CombiMatrix’s Board of Directors reaffirms the CombiMatrix Board Recommendation in such disclosure or public statement or within three (3) Business Days of such disclosure or public statement; (B) in the case of clause (iii), any such disclosure or public statement shall be deemed to be a CombiMatrix Board Adverse Recommendation Change subject to the terms and conditions of this Agreement unless the CombiMatrix Board of Directors reaffirms the CombiMatrix Board Recommendation in such disclosure or public statement or within five (5) Business Days of such disclosure or public statement; and (C) CombiMatrix shall not affect a CombiMatrix Board Adverse Recommendation Change unless specifically permitted pursuant to the terms of Section 5.2(c).

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 Body with respect to the Merger and the other Contemplated Transactions, and to submit promptly any additional information requested by any such Governmental Body. Without limiting the generality of the foregoing, the Parties shall, promptly after the date of this Agreement, prepare and file, if any, (a) the notification and report forms required to be filed under the HSR Act and (b) any notification or other document required to be filed in connection with the Merger and the Warrant Exchange Offer under any applicable foreign Legal Requirement relating to antitrust or competition matters. CombiMatrix and Invitae shall respond as promptly as is practicable to respond in compliance with: (i) any inquiries or requests received from the Federal Trade Commission or the Department of Justice for additional information or documentation; and (ii) any inquiries or requests received from any state attorney general, foreign antitrust or competition authority or other Governmental Body in connection with antitrust or competition matters.

5.4 Warrants , RSUs and CombiMatrix Options .

(a) At the Effective Time, (i) each in-the-money CombiMatrix Option outstanding and unexercised immediately prior to the Effective Time, whether or not vested or exercisable, shall become immediately vested as of the Effective Time and converted into the number of shares of unrestricted Invitae Common Stock calculated pursuant to Section 1.5(a)(ii)(4) (“ **Converted CombiMatrix Options** ”), and (ii) each out-of-the-money CombiMatrix Option outstanding and unexercised immediately prior to the Effective Time, whether or not vested or exercisable, shall be cancelled and terminated as of the Effective Time for no consideration (the “ **Terminated CombiMatrix Options** ”). From and after the date of this Agreement, no further awards will be made under the 2006 Plan or the CombiMatrix Molecular Diagnostics 2005 Stock Award Plan (the “ **CMDX 2005 Plan** ”) adopted by CombiMatrix’s wholly owned subsidiary, CombiMatrix Molecular Diagnostics, Inc. (“ **CMDX** ”). Prior to the Effective Time, the CombiMatrix Board of Directors will adopt appropriate resolutions (which draft resolutions shall be provided to Invitae for reasonable review and approval by Invitae prior to

adoption by the CombiMatrix Board of Directors) and will have taken all other actions necessary and appropriate (under the 2006 Plan, the CombiMatrix Options and otherwise) to effectuate the provisions of this Section 5.4(a), including to ensure that (x) as of the Effective Time each Converted CombiMatrix Option shall become immediately vested as of the Effective Time and converted into the number of shares of unrestricted Invitae Common Stock calculated pursuant to Section 1.5(a)(ii)(4) and (y) from and after the Effective Time holders of Terminated CombiMatrix Options have no rights with respect thereto and all Terminated CombiMatrix Options shall have been cancelled.

(b) Immediately after announcement of the Merger, CombiMatrix shall repurchase half of the outstanding and unexercised CombiMatrix Series A Warrants, CombiMatrix Series B Warrants, CombiMatrix Series C Warrants, CombiMatrix Series E Warrants and CombiMatrix PIPE Warrants, and upon the Closing, CombiMatrix shall repurchase the remainder of the outstanding and unexercised CombiMatrix Series A Warrants, CombiMatrix Series B Warrants, CombiMatrix Series C Warrants, CombiMatrix Series E Warrants and CombiMatrix PIPE Warrants, all pursuant to the terms of that certain CombiMatrix Common Stock Purchase Warrants Repurchase Agreement dated July 11, 2016 (collectively, the “*CombiMatrix Warrant Repurchase*”). CombiMatrix will have taken all other actions necessary and appropriate under each such warrant series to effectuate the CombiMatrix Warrant Repurchase and the provisions of this Section 5.4(b) and to ensure that, from and after the Effective Time, holders of CombiMatrix Series A Warrants, CombiMatrix Series B Warrants, CombiMatrix Series C Warrants, CombiMatrix Series E Warrants and CombiMatrix PIPE Warrants have no rights with respect thereto and such warrants have been cancelled.

(c) At the Effective Time, all CombiMatrix Series D Warrants and CombiMatrix Series F Warrants that are outstanding and unexercised at the Effective Time (i.e., to the extent not exchanged in the Warrant Exchange Offer, as to the CombiMatrix Series F Warrants, or exercised prior to consummation of the Merger) shall be converted into and become warrants to purchase Invitae Common Stock, and Invitae shall assume each such CombiMatrix Series D Warrant and CombiMatrix Series F Warrant in accordance with its terms. All rights with respect to CombiMatrix Common Stock under CombiMatrix Series D Warrants and CombiMatrix Series F Warrants assumed by Invitae shall thereupon be converted into rights with respect to Invitae Common Stock. Accordingly, from and after the Effective Time: (i) each CombiMatrix Series D Warrant and CombiMatrix Series F Warrant assumed by Invitae may be exercised solely for shares of Invitae Common Stock; (ii) the number of shares of Invitae Common Stock subject to each CombiMatrix Series D Warrant and CombiMatrix Series F Warrant assumed by Invitae shall be determined by multiplying (A) the number of shares of CombiMatrix Common Stock that were subject to such CombiMatrix Series D Warrant or CombiMatrix Series F Warrant immediately prior to the Effective Time by (B) the Exchange Ratio; (iii) the per share exercise price for the Invitae Common Stock issuable upon exercise of each CombiMatrix Series D Warrant or CombiMatrix Series F Warrant assumed by Invitae shall be determined by dividing the per share exercise price of CombiMatrix Common Stock subject to such CombiMatrix Series D Warrant or CombiMatrix Series F Warrant, as in effect immediately prior to the Effective Time, by the Exchange Ratio; and (iv) any restriction on any CombiMatrix Series D Warrant or CombiMatrix Series F Warrant assumed by Invitae shall continue in full force and effect, and the term and other provisions of such CombiMatrix Series D Warrant or CombiMatrix Series F Warrant shall otherwise remain unchanged.

(d) Prior to the Effective Time, CombiMatrix shall take all actions that may be necessary (under the 2006 Plan, the Converted CombiMatrix Options, the Terminated CombiMatrix Options, the CombiMatrix RSUs, the CombiMatrix Warrants and otherwise) to effectuate the provisions of this Section 5.4 and to ensure that, from and after the Effective Time, holders of Converted CombiMatrix Options, Terminated CombiMatrix Options, CombiMatrix RSUs and CombiMatrix Warrants have no rights with respect thereto other than those specifically provided in this Section 5.4 or, as applicable, Section 1.5.

5.5 Employee Benefits .

(a) Effective no later than the day immediately preceding the Closing Date, CombiMatrix shall terminate (i) all CombiMatrix Employee Plans that are “employee benefit plans” within the meaning of ERISA, including any CombiMatrix Employee Plans intended to include a Code Section 401(k) arrangement (each, a “*CombiMatrix 401(k) Plan*”), and (ii) each other CombiMatrix Employee Plan set forth on Schedule 5.5 unless written notice is provided by Invitae to CombiMatrix no later than three (3) calendar days prior to the Closing Date, instructing CombiMatrix not to terminate any such CombiMatrix Employee Plan. CombiMatrix shall provide Invitae with evidence that such CombiMatrix Employee Plan(s) have been terminated (effective no later than the day immediately preceding the Closing Date) pursuant to resolutions of the CombiMatrix Board of Directors. The form and substance of such resolutions shall be subject to review and approval of Invitae. CombiMatrix also shall take such other actions in furtherance of terminating such CombiMatrix Employee Plan(s) as Invitae may reasonably require. In the event that termination of any CombiMatrix 401(k) Plan would reasonably be anticipated to trigger liquidation charges, surrender charges or other fees, then CombiMatrix shall take such actions as are necessary to reasonably estimate the amount of such charges and/or fees and provide such estimate in writing to Invitae no later than fourteen (14) calendar days prior to the Closing Date.

(b) Without limiting the provisions of Section 10.7, Invitae shall exercise commercially reasonable efforts to cause its employee benefit plan intended to include a Code Section 401(k) arrangement (an “*Invitae 401(k) Plan*”) to (i) effective on the Closing Date, add CombiMatrix to the Invitae 401(k) Plan as a participating employer, (ii) accept, in accordance with applicable law, a “direct rollover” (within the meaning of Section 401(a)(31) of the Code) of the account balances (including earnings thereon through the date of transfer and any promissory notes evidencing outstanding loans) of each CombiMatrix employee under the CombiMatrix 401(k) Plan if such employee continues to be employed by CombiMatrix (or Invitae) through the Closing Date and if such rollover to the Invitae 401(k) Plan is elected in accordance with applicable law by such CombiMatrix employee and (iii) waive all limitations as to eligibility waiting periods with respect to participation applicable under such Invitae 401(k) Plan for CombiMatrix employees continuing to be employed by CombiMatrix (or Invitae) through the Closing Date.

5.6 Indemnification of Officers and Directors .

(a) From the Effective Time through the sixth (6th) anniversary of the date on which the Effective Time occurs, the Surviving Corporation shall indemnify and hold harmless each person who is now, or has been at any time prior to the date of this Agreement, or who becomes prior to the Effective Time, a director or officer of CombiMatrix (the “*D&O Indemnified*”

Parties”), against all claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys’ fees and disbursements incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that the D&O Indemnified Party is or was a director or officer of CombiMatrix, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent permitted under the DGCL for directors or officers of Delaware corporations. Each D&O Indemnified Party will be entitled to advancement of expenses incurred in the defense of any such claim, action, suit, proceeding or investigation from the Surviving Corporation upon receipt by the Surviving Corporation from the D&O Indemnified Party of a request therefor; *provided*, that any person to whom expenses are advanced provides an undertaking, to the extent then required by the DGCL, as applicable, to repay such advances if it is ultimately determined that such person is not entitled to indemnification.

(b) The Certificate of Incorporation and Bylaws of the Surviving Corporation shall contain, and Invitae shall cause the Certificate of Incorporation and Bylaws of the Surviving Corporation to so contain, provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers of CombiMatrix than are presently set forth in the Certificate of Incorporation and Bylaws of CombiMatrix, which provisions shall not be amended, modified or repealed for a period of six years’ time from the Effective Time in a manner that would adversely affect the rights thereunder of individuals who, at or prior to the Effective Time, were officers or directors of CombiMatrix.

(c) CombiMatrix shall, prior to the Closing, purchase an insurance policy with an effective date as of the Closing which maintains in effect for six years from the Closing the current directors’ and officers’ liability insurance policies maintained by CombiMatrix.

(d) The Surviving Corporation shall pay all expenses, including reasonable attorneys’ fees, that may be incurred by the persons referred to in this Section 5.6 in connection with their enforcement of their rights provided in this Section 5.6.

(e) The provisions of this Section 5.6 are intended to be in addition to the rights otherwise available to the current and former officers and directors of CombiMatrix by law, charter, statute, bylaw or agreement, and shall operate for the benefit of, and shall be enforceable by, each of the D&O Indemnified Parties, their heirs and their representatives.

(f) In the event the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, (ii) transfers all or substantially all of its properties and assets to any person, or (iii) dissolves, then, and in each such case, proper provision shall be made so that the successors and assigns of the Surviving Corporation (or Invitae, in the case of dissolution) shall succeed to the obligations set forth in this Section 5.6.

5.7 Additional Agreements . 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, each Party: (i) shall make all Filings (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 Legal Requirement, Contract or otherwise by such Party in connection with the Merger or any of the other Contemplated Transactions or for any such Contract to remain in full force and effect (including, in the case of Invitae, the Oxford Consent); (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 obligations of CombiMatrix, in the case of Invitae and Merger Sub, or Invitae and Merger Sub, in the case of CombiMatrix, to effect the Merger and otherwise consummate the Contemplated Transactions.

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 disclosure (to any customers or employees of such Party, to the public or otherwise) regarding the Merger or any of the other Contemplated Transactions unless: (a) the other Parties shall have approved such press release or disclosure in writing; or (b) such Party shall have determined in good faith, upon the advice of outside legal counsel, that such disclosure is required by applicable Legal Requirements and, to the extent practicable, before such press release or disclosure is issued or made, such Party advises the other Parties of, and consults with the other Parties regarding, the text of such press release or disclosure; *provided, however*, that each of CombiMatrix and Invitae 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 previous press releases, public disclosures or public statements made by CombiMatrix or Invitae in compliance with this Section 5.8

5.9 Tax Matters .

(a) Invitae, Merger Sub and CombiMatrix shall use their respective commercially reasonable efforts to cause the Merger, together with the Warrant Exchange Offer, to qualify, and agree not to, and not to permit or cause any affiliate or any Subsidiary to, take any actions or cause any action to be taken which would reasonably be expected to prevent the Merger, together with the Warrant Exchange Offer, from qualifying, as a "reorganization" under Section 368(a) of the Code.

(b) This Agreement is intended to constitute, and the Parties hereby adopt this Agreement as, a "plan of reorganization" within the meaning of Section 1.368-2(g) of the Treasury Regulations. The Parties shall treat and shall not take any tax reporting position inconsistent with the treatment of the Merger, together with the Warrant Exchange Offer, 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) CombiMatrix shall deliver to Stradling and Pillsbury a "Tax Representation Letter," dated as of the date of the tax opinions referenced in Section 5.1(a) and signed by an officer of CombiMatrix, containing representations of CombiMatrix, and Invitae shall deliver to Pillsbury and Stradling a "Tax Representation Letter," dated as of the date of the tax opinions referenced in Section 5.1(a) and signed by an officer of Invitae, containing representations of Invitae, in each case as shall be reasonably necessary or appropriate to enable Stradling and Pillsbury to render the applicable opinions described in Sections 5.1(a) and 5.1(b) of this Agreement.

5.10 Securityholder Litigation . CombiMatrix shall give Invitae the opportunity to participate, subject to a customary joint defense agreement, in the defense or settlement of any litigation (including litigation brought by stockholders or securityholders of CombiMatrix) against CombiMatrix and/or its directors relating to the Contemplated Transactions, and CombiMatrix shall not settle or compromise any litigation arising or resulting from the Contemplated Transactions without Invitae's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed.

5.11 Legends . Invitae shall be entitled to place appropriate legends on the certificates evidencing any shares of Invitae Common Stock to be received in the Merger by equityholders of CombiMatrix who may be considered Affiliates of Invitae for purposes of Rules 144 and 145 under the Securities Act reflecting the restrictions set forth in Rules 144 and 145 and to issue appropriate stop transfer instructions to the transfer agent for Invitae Common Stock.

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 its respective obligations under this Agreement and to enable the combined entity to continue to meet its obligations following the Closing.

5.13 Directors and Officers . CombiMatrix shall obtain and deliver to Invitae at or prior to the Effective Time the resignation of each officer and director of CombiMatrix who is not continuing, at the sole discretion of Invitae, as an officer or director of the Surviving Corporation following the Effective Time.

5.14 Section 16 Matters . Prior to the Effective Time, Invitae shall take all such steps as may be required to cause any acquisitions of Invitae Common Stock resulting from the Merger and the other actions contemplated by this Agreement, by each individual who is reasonably expected to become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Invitae, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

5.15 CombiMatrix Transaction Bonus Payout Agreements. Bonus payments under the CombiMatrix Transaction Bonus Plan shall be paid in cash to all participants in accordance with the terms of the CombiMatrix Transaction Bonus Plan, other than the executive officers, the Vice President of Billing & Reimbursement and the directors of CombiMatrix. Pursuant to the CombiMatrix Transaction Bonus Payout Agreements entered into with each of the executive officers and the Vice President of Billing & Reimbursement of CombiMatrix concurrently with the execution of this Agreement, the bonus payments for each such executive officer and Vice President of Billing & Reimbursement shall be paid in RSUs of Invitae (to be settled in shares of Invitae Common Stock) calculated using the Invitae Trailing Average Share Value and subject to time-based vesting with acceleration upon a change in control of Invitae and/or certain other events as set forth in the applicable CombiMatrix Transaction Bonus Payout Agreement. Pursuant to the CombiMatrix Transaction Bonus Payout Agreements entered into with each of the outside directors of CombiMatrix concurrently with the execution of this Agreement, the bonus payments for each such director shall be paid in unrestricted shares of Invitae Common Stock calculated using the Invitae Trailing Average Share Value.

5.16 Allocation Certificate . CombiMatrix shall prepare and deliver to Invitae at least two (2) Business Days prior to the Closing Date a certificate signed by the Chief Financial Officer and the Chief Executive Officer of CombiMatrix, in a form reasonably acceptable to Invitae, which sets forth a true and complete list, as of immediately prior to the Effective Time, of the following (the “*Allocation Certificate*”): (i) the record holders of CombiMatrix Common Stock, CombiMatrix RSUs, CombiMatrix Series F Preferred Stock, CombiMatrix Series D Warrants and CombiMatrix Series F Warrants; (ii) the number of shares of CombiMatrix Common Stock owned and/or underlying the CombiMatrix RSUs, CombiMatrix Series F Preferred Stock, CombiMatrix Series D Warrants and CombiMatrix Series F Warrants held by such record holders; (iii) the exercise price for each such CombiMatrix Series D Warrant and CombiMatrix Series F Warrant and the conversion price for the CombiMatrix Series F Preferred Stock; (iv) the number of shares of Invitae Common Stock each record holder of CombiMatrix Common Stock, CombiMatrix RSUs, or CombiMatrix Series F Preferred Stock is entitled to receive as a result of application of the Exchange Ratio; (v) the number of shares of Invitae Common Stock that will be issuable upon the exercise of CombiMatrix Series D Warrants and CombiMatrix Series F Warrants (to the extent not tendered for exchange or exercised prior to the Closing Date) by the record holders thereof as a result of application of the Exchange Ratio; (vi) confirmation of the pending CombiMatrix Warrant Repurchase, including the pay-out details with respect to the holders of the CombiMatrix Warrants at issue; and (vii) the holders of the outstanding CombiMatrix Options, together with confirmation of the pending conversion of the in-the-money CombiMatrix Options pursuant to Sections 5.4(a) and 1.5(a)(ii)(4) and the termination of the out-of-the-money CombiMatrix Options pursuant to Section 5.4(a).

5.17 Disclosure of Liabilities . For purposes of the computation of Net Cash pursuant to Section 1.6, on or prior to the Determination Date, CombiMatrix shall provide Invitae with a list of all Liabilities of CombiMatrix as of the Determination Date as well as projected through the Anticipated Closing Date which are individually in excess of \$25,000 or in excess of \$25,000 in the aggregate, that had not previously been disclosed to Invitae in the CombiMatrix Disclosure Schedules.

5.18 Takeover Statutes . If any “control share acquisition,” “fair price,” “moratorium” or other anti-takeover Legal Requirement becomes or is deemed to applicable to Invitae, CombiMatrix, Merger Sub, or the Contemplated Transactions, then each of Invitae, CombiMatrix, Merger Sub, and their respective board of directors shall grant such approvals and take such actions as are necessary so that the Merger and the other Contemplated Transactions may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to render such anti-takeover Legal Requirement inapplicable to the foregoing.

Section 6. CONDITIONS PRECEDENT TO OBLIGATIONS OF EACH PARTY

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:

6.1 Effectiveness of Registration Statement s. Each 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 such Registration Statement.

6.2 No Restraints . No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Merger or the Warrant Exchange Offer shall have been issued by any court of competent jurisdiction or other Governmental Body of competent jurisdiction and remain in effect, and there shall not be any Legal Requirement which has the effect of making the consummation of the Merger or the Warrant Exchange Offer illegal.

6.3 Stockholder Approval . The Merger Proposal shall have been duly adopted and approved by the Required CombiMatrix Stockholder Vote.

6.4 Regulatory Matters . Any waiting period applicable to the consummation of the Merger and the Warrant Exchange Offer under the HSR Act shall have expired or been terminated, and there shall not be in effect any voluntary agreement between Invitae, Merger Sub and/or CombiMatrix, on the one hand, and the Federal Trade Commission, the Department of Justice or any foreign Governmental Body, on the other hand, pursuant to which such Party has agreed not to consummate the Merger or the Warrant Exchange Offer for any period of time; *provided* , that neither CombiMatrix, on the one hand, nor Invitae or Merger Sub, on the other hand, shall enter into any such voluntary agreement without the written consent of all Parties.

6.5 No Governmental Proceedings Relating to Contemplated Transactions or Right to Operate Business . There shall not be any Legal Proceeding pending, or overtly threatened in writing by an official of a Governmental Body in which such Governmental Body indicates that it intends to conduct any Legal Proceeding or take any other action: (a) challenging or seeking to restrain or prohibit the consummation of the Merger, the Warrant Exchange Offer or any of the other Contemplated Transactions; (b) relating to the Merger, the Warrant Exchange Offer or any of the other Contemplated Transactions and seeking to obtain from Invitae, Merger Sub or CombiMatrix any damages or other relief that may be material to Invitae or CombiMatrix; (c) seeking to prohibit or limit in any material and adverse respect the ability to vote, transfer, receive dividends with respect to or otherwise exercise ownership rights with respect to any Invitae Common Stock to be issued in the Merger or the Warrant Exchange Offer; (d) that would materially and adversely affect the right or ability of Invitae or CombiMatrix, respectively, to own the assets or operate the business of Invitae or CombiMatrix (including, from and after the Merger, with CombiMatrix as a subsidiary of Invitae); or (e) seeking to compel CombiMatrix or Invitae (or any of their respective Subsidiaries) to dispose of or hold separate any material assets as a result of the Merger, the Warrant Exchange Offer or any of the other Contemplated Transactions.

6.6 Listing . The shares of Invitae Common Stock to be issued in the Merger and the Warrant Exchange Offer shall be approved for listing on the NYSE as of the Effective Time.

Section 7. ADDITIONAL CONDITIONS PRECEDENT TO OBLIGATIONS OF INVITAE AND MERGER SUB

The obligations of Invitae 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 Invitae, at or prior to the Closing, of each of the following conditions:

7.1 Accuracy of Representations . The representations and warranties of CombiMatrix in Sections 2.1, 2.2, 2.3, 2.4, 2.11, 2.17, 2.19, 2.20 and 2.23 are true and correct in all material respects as of the date of this Agreement and are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on the Closing Date, except for those representations and warranties which address matters only as of a particular date (which representations were so true and correct as of such particular date); and (b) all other representations and warranties of CombiMatrix in Section 2 are true and correct as of the date of this Agreement and are true and correct on and as of the Closing Date with the same force and effect as if made on the Closing Date except (with respect solely to this clause (b)) (i) in each case, or in the aggregate, where the failure to be true and correct would not have a CombiMatrix Material Adverse Effect (provided that all “CombiMatrix Material Adverse Effect” qualifications and other materiality qualifications limiting the scope of the representations and warranties of CombiMatrix in Section 2 will be disregarded), or (ii) for those representations and warranties which address matters only as of a particular date (which representations were so true and correct, subject to the qualifications as set forth in the preceding clause (i), as of such particular date). It is understood that, for purposes of determining the accuracy of any such representations and warranties, any update of or modification to the CombiMatrix Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded.

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

7.3 No CombiMatrix Material Adverse Effect . Since the date of this Agreement, there shall not have occurred any CombiMatrix Material Adverse Effect that is continuing.

7.4 Warrant Exchange Offer . The Warrant Exchange Offer shall have been consummated (or shall be in the process of being consummated substantially simultaneous with the Closing), and the Minimum Warrant Exchange Participation shall have been met (or shall be assured of being met assuming the Warrant Exchange Offer is consummated substantially simultaneous with the Closing); *provided, however*, that Invitae has offered shares of Invitae Common Stock with a value (based on the Invitae Trailing Average Share Value) of at least \$2.90 (rounded to the nearest cent) per CombiMatrix Series F Warrant in the Warrant Exchange Offer.

7.5 CombiMatrix Warrant Repurchase . CombiMatrix shall have effected the CombiMatrix Warrant Repurchase.

7.6 CombiMatrix Transaction Bonus Payout Agreements . The CombiMatrix Transaction Bonus Payout Agreements entered into concurrently with this Agreement by and among CombiMatrix, Invitae and each of the participants in the CombiMatrix Transaction Bonus Plan remain in full force and effect.

7.7 Consulting Agreements . Consulting agreements with each of Mark McDonough (CombiMatrix's President and Chief Executive Officer) and Scott Burrell (CombiMatrix's Chief Financial Officer), acceptable in each instance to the applicable individual and Invitae, shall have been executed, with such agreements to commence effectiveness immediately upon the Effective Time.

7.8 Credit Facility Waiver or Consent . Invitae shall have received any Consent required pursuant to the terms of that certain Loan and Security Agreement dated as of March 15, 2017 between Oxford Capital, LLC and Invitae (as it may be amended from time to time) such that none of the Merger, the Warrant Exchange Offer nor any of the other Contemplated Transactions shall cause or represent a breach of event of default thereunder (the "**Oxford Consent**").

7.9 Agreements and Other Documents . Invitae shall have received the following agreements and other documents, each of which shall be in full force and effect:

(a) a certificate executed by the Chief Executive Officer and Chief Financial Officer of CombiMatrix confirming that the conditions set forth in Sections 7.1, 7.2, 7.3, 7.5 and 7.6 have been duly satisfied;

(b) certificates of good standing (or equivalent documentation) of CombiMatrix and each CombiMatrix Subsidiary in its jurisdiction of organization and the various foreign jurisdictions in which it is qualified, certified charter documents of CombiMatrix and each CombiMatrix Subsidiary, and a certificate as to the incumbency of officers and the adoption of resolutions of the CombiMatrix Board of Directors authorizing the execution of this Agreement and the consummation of the Contemplated Transactions;

(c) written resignations in forms satisfactory to Invitae, dated as of the Closing Date and effective as of the Closing, executed by the officers and directors of CombiMatrix who will not be officers or directors of the Surviving Corporation pursuant to Section 5.13;

(d) the Allocation Certificate; and

(e) a form of FIRPTA certificate to the Internal Revenue Service in accordance with the requirements of Treasury Regulation Section 1.897-2(h), and in form and substance reasonably acceptable to Invitae, along with written authorization for Invitae to deliver such notice form to the Internal Revenue Service on behalf of CombiMatrix upon the Closing.

Section 8. ADDITIONAL CONDITIONS PRECEDENT TO OBLIGATION OF COMBIMATRIX

The obligations of CombiMatrix 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 CombiMatrix, at or prior to the Closing, of each of the following conditions:

8.1 Accuracy of Representations . The representations and warranties of Invitae and Merger Sub in Sections 3.1, 3.2, 3.3, 3.4, 3.7 and 3.8 are true and correct in all material respects as of the date of this Agreement and are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on the Closing Date, except for those representations and warranties which address matters only as of a particular date (which representations were so true and correct as of such particular date); and (b) all other representations and warranties of Invitae and Merger Sub in Section 3 are true and correct as of the date of this Agreement and are true and correct on and as of the Closing Date with the same force and effect as if made on the Closing Date except (with respect solely to this clause (b)) (i) in each case, or in the aggregate, where the failure to be true and correct would not have an Invitae Material Adverse Effect (provided that all “Invitae Material Adverse Effect” qualifications and other materiality qualifications limiting the scope of the representations and warranties of Invitae and Merger Sub in Section 3 will be disregarded), or (ii) for those representations and warranties which address matters only as of a particular date (which representations were so true and correct, subject to the qualifications as set forth in the preceding clause (i), as of such particular date). It is understood that, for purposes of determining the accuracy of any such representations and warranties, any update of or modification to the Invitae Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded.

8.2 Performance of Covenants . All of the covenants and obligations in this Agreement that either Invitae or 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.

8.3 No Invitae Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Invitae Material Adverse Effect that is continuing.

8.4 Certificate . CombiMatrix shall have received a certificate executed by the Chief Executive Officer and Chief Financial Officer of Invitae confirming that the conditions set forth in Sections 8.1, 8.2 and 8.3 have been duly satisfied.

Section 9. TERMINATION

9.1 Termination . This Agreement may be terminated prior to the Effective Time (whether before or after adoption and approval of the Merger Proposal by CombiMatrix’s stockholders, unless otherwise specified below):

(a) by mutual written consent duly authorized by the Boards of Directors of Invitae and CombiMatrix;

(b) by either Invitae or CombiMatrix if the Merger shall not have been consummated by January 31, 2018 (subject to possible extension as provided in this Section 9.1(b), the “**End Date**”); *provided, however*, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to CombiMatrix, on the one hand, or to Invitae and Merger Sub, on the other hand, if such Party’s action or failure to act has been a principal cause of the failure of the Merger to occur on or before the End Date and such action or failure to act constitutes a breach of this Agreement; and *provided, further*, that, in the event the waiting period under the HSR Act has not expired or a request for additional information has been made by any Governmental Authority, or in the event that the SEC has not declared effective under the Securities Act either Registration Statement by the date which is sixty (60) days prior to the End Date, then either CombiMatrix or Invitae shall be entitled to extend the End Date for an additional sixty (60) days;

(c) by either Invitae or CombiMatrix if a court of competent jurisdiction or other Governmental Body shall have issued a final and nonappealable order, decree or ruling, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger;

(d) by either Invitae or CombiMatrix if (i) the CombiMatrix Stockholders' Meeting (including any adjournments and postponements thereof) shall have been held and completed and CombiMatrix's stockholders shall have taken a final vote on the Merger Proposal and (ii) the Merger Proposal shall not have been approved and adopted at the CombiMatrix Stockholders' Meeting (or any adjournment or postponement thereof) by the Required CombiMatrix Stockholder Vote; *provided, however*, that the right to terminate this Agreement under this Section 9.1(d) shall not be available to CombiMatrix where the failure to obtain the Required CombiMatrix Stockholder Vote for the Merger Proposal shall have been caused by the action or failure to act of CombiMatrix and such action or failure to act constitutes a material breach by CombiMatrix of this Agreement;

(e) by Invitae if a CombiMatrix Triggering Event shall have occurred;

(f) by CombiMatrix, upon a breach of any representation, warranty, covenant or agreement on the part of Invitae or Merger Sub set forth in this Agreement, or if any representation or warranty of Invitae or Merger Sub shall have become inaccurate, in either case such that the conditions set forth in Section 8.1 or Section 8.2 would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate, or if there shall have occurred any Invitae Material Adverse Effect that is continuing such that the condition set forth in Section 8.3 would not be satisfied, *provided*, that if such inaccuracy in Invitae's or Merger Sub's representations and warranties or breach by Invitae or Merger Sub is curable by Invitae or Merger Sub, or if the Effect(s) constituting the Invitae Material Adverse Effect at issue is/are capable of being ameliorated so as to not constitute an Invitae Material Adverse Effect, then this Agreement shall not terminate pursuant to this Section 9.1(f) as a result of such particular breach or inaccuracy or Invitae Material Adverse Effect until the earlier of (i) the expiration of a thirty (30) day period commencing upon delivery of written notice to Invitae or Merger Sub (as applicable) of such breach or inaccuracy or Invitae Material Adverse Effect and (ii) Invitae or Merger Sub (as applicable) ceasing to exercise commercially reasonable efforts to cure such breach or ameliorate such Invitae Material Adverse Effect (it being understood that this Agreement shall not terminate pursuant to this Section 9.1(f) as a result of such particular breach or inaccuracy or Invitae Material Adverse Effect if such breach by Invitae or Merger Sub is cured or such Invitae Material Adverse Effect is ameliorated prior to such termination becoming effective); or

(g) by Invitae, upon a breach of any representation, warranty, covenant or agreement on the part of CombiMatrix set forth in this Agreement, or if any representation or warranty of CombiMatrix shall have become inaccurate, in either case such that the conditions set forth in Section 7.1 or Section 7.2 would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate, or if there shall have occurred any CombiMatrix Material Adverse Effect that is continuing such that the condition set forth in Section 7.3 would not be satisfied, *provided*, that if such inaccuracy in CombiMatrix's representations and warranties or breach by CombiMatrix is curable by CombiMatrix, or if the Effect(s) constituting the CombiMatrix Material Adverse Effect at issue is/are capable of being ameliorated so as to not constitute a CombiMatrix Material Adverse Effect, then this Agreement shall not terminate pursuant to this Section 9.1(g) as a result of such particular breach or inaccuracy or CombiMatrix Material Adverse Effect until the earlier of (i) the expiration of a thirty (30) day period commencing upon delivery of written notice to CombiMatrix of such breach or inaccuracy or CombiMatrix Material Adverse Effect and (ii) CombiMatrix ceasing to exercise commercially reasonable efforts to cure such breach or ameliorate such CombiMatrix Material Adverse Effect (it being understood that this Agreement shall not terminate pursuant to this Section 9.1(g) as a result of such particular breach or inaccuracy or CombiMatrix Material Adverse Effect if such breach by CombiMatrix is cured or such CombiMatrix Material Adverse Effect is ameliorated prior to such termination becoming effective).

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give a notice of such termination to the other Party specifying the provisions hereof pursuant to which such termination is made and the basis therefor described in reasonable detail.

9.2 Effect of Termination . In the event of the termination of this Agreement as provided in Section 9.1, this Agreement shall be of no further force or effect; *provided, however*, that (i) this Section 9.2, Section 9.3 and Section 10 shall survive the termination of this Agreement and shall remain in full force and effect, and (ii) the termination of this Agreement shall not relieve any Party for its fraud or from any liability for any willful and material breach of any representation, warranty, covenant, obligation or other provision contained in this Agreement.

9.3 Expenses; Termination Fees .

(a) Except as set forth in this Section 9.3, all fees and expenses incurred in connection with this Agreement and the Contemplated Transactions (including any attorneys' and accountants' fees and expenses) shall be paid by the Party incurring such expenses, whether or not the Merger is consummated; *provided, however*, that Invitae and CombiMatrix shall share equally all filing fees and expenses, other than attorneys' and accountants' fees and expenses, incurred in relation to the Filings by the Parties under any Filing requirement under the HSR Act and any foreign antitrust Legal Requirement applicable to this Agreement and the Contemplated Transactions; and *provided, further*, that Invitae and CombiMatrix shall also share equally all fees and expenses, other than attorneys' and accountants' fees and expenses, of the Exchange Agent and in relation to preparation and filing with the SEC of the Registration Statements (including any preliminary materials related thereto and all amendments and supplements thereto, as well as any financial statements and schedules thereto) as well as the printing (*e.g.* , paid to a financial printer) of the Registration Statements and the printing or mailing of the Proxy Statement/Prospectus and the Offer Documents.

(b) If (i) this Agreement is terminated by Invitae or CombiMatrix pursuant to Section 9.1(d) or by Invitae pursuant to Section 9.1(e), (ii) at any time before the CombiMatrix Stockholders' Meeting a bona fide Acquisition Proposal with respect to CombiMatrix shall have been publicly announced or disclosed or, in the event this Agreement is terminated pursuant to Section 9.1(e), otherwise communicated to CombiMatrix's Board of Directors, and (iii) in the event this Agreement is terminated pursuant to Section 9.1(d), within twelve (12) months after the date of such termination, CombiMatrix enters into a definitive agreement with respect to a Subsequent Transaction or consummates a Subsequent Transaction, then CombiMatrix shall pay to Invitae, within ten (10) Business Days after termination (or, if applicable, upon such entry into a definitive agreement or consummation of a Subsequent Transaction), a nonrefundable fee in an amount equal to \$1,400,000 (the "**Termination Fee**"), in addition to any amount payable to Invitae pursuant to Section 9.3(e); *provided, however*, that such Termination Fee shall be reduced by any amount already paid to Invitae pursuant to Section 9.3(d).

(c) (i) If this Agreement is terminated by CombiMatrix pursuant to Section 9.1(f) other than as a result of an Invitae Material Adverse Effect or (ii) in the event of a failure of CombiMatrix to consummate the transactions to be consummated at the Closing solely as a result of an Invitae Material Adverse Effect as set forth in Section 8.3 (*provided*, that at such time all of the conditions precedent to the obligations of Invitae to a Closing set forth in Section 6 and Section 7 of this Agreement have been satisfied by CombiMatrix, are capable of being satisfied by CombiMatrix, or have been waived by Invitae), then Invitae shall reimburse CombiMatrix for all reasonable fees and expenses incurred by CombiMatrix in connection with this Agreement and the Contemplated Transactions, including (A) all fees and expenses incurred by engagement of the Exchange Agent and in relation to preparation and filing with the SEC of the Registration Statements (including any preliminary materials related thereto and all amendments and supplements thereto, as well as any financial statements and schedules thereto) as well as the printing (*e.g.*, paid to a financial printer) of the Registration Statements and the printing or mailing of the Proxy Statement/Prospectus and the Offer Documents and (B) all fees and expenses incurred in connection with the preparation and Filing under any Filing requirement of any Governmental Authority applicable to this Agreement and the Contemplated Transactions (such expenses, including (A) and (B) above, collectively, the "**Third Party Expenses**"), up to a maximum of \$400,000, by wire transfer of same-day funds within ten (10) Business Days following the date on which CombiMatrix submits to Invitae true and correct copies of reasonable documentation supporting such Third Party Expenses; *provided, however*, that such Third Party Expenses shall not include any amounts for a financial advisor to CombiMatrix except for reasonably documented out-of-pocket expenses otherwise reimbursable by CombiMatrix to such financial advisor pursuant to the terms of CombiMatrix's engagement letter or similar arrangement with such financial advisor.

(d) (i) If this Agreement is terminated by Invitae pursuant to Sections 9.1(d), 9.1(e) or 9.1(g) (other than, in the instance of Section 9.1(g), as a result of a CombiMatrix Material Adverse Effect), (ii) if this Agreement is terminated by CombiMatrix pursuant to Section 9.1(d), or (iii) in the event of a failure of Invitae to consummate the transactions to be consummated at the Closing solely as a result of a CombiMatrix Material Adverse Effect as set forth in Section 7.3 (*provided*, that at such time all of the conditions precedent to the obligations of CombiMatrix to a Closing set forth in Section 6 and Section 8 of this Agreement have been satisfied by Invitae or Merger Sub, are capable of being satisfied by Invitae or Merger Sub, or have been waived by

CombiMatrix), then CombiMatrix shall reimburse Invitae for all Third Party Expenses incurred by Invitae, up to a maximum of \$400,000, by wire transfer of same-day funds within ten (10) Business Days following the date on which Invitae submits to CombiMatrix true and correct copies of reasonable documentation supporting such Third Party Expenses; *provided, however*, that such Third Party Expenses shall not include any amounts for a financial advisor to Invitae except for reasonably documented out-of-pocket expenses otherwise reimbursable by Invitae to such financial advisor pursuant to the terms of Invitae's engagement letter or similar arrangement with such financial advisor.

(e) If either Party fails to pay when due any amount payable by such Party under Sections 9.3(b), 9.3(c) or 9.3(d), then (i) 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 9.3, and (ii) such Party shall pay to the other Party interest on such overdue amount (for the period commencing as of the date such overdue amount was originally required to be paid and ending on the date such overdue amount is actually paid to the other Party in full) at a rate per annum equal to the "prime rate" (as announced by Bank of America or any successor thereto) in effect on the date such overdue amount was originally required to be paid.

(f) The Parties agree that the payment of the fees and expenses set forth in this Section 9.3, subject to Section 9.2, shall be the sole and exclusive remedy of each Party following a termination of this Agreement under the circumstances described in this Section 9.3, it being understood that in no event shall either Invitae or CombiMatrix be required to pay fees or damages payable pursuant to this Section 9.3 on more than one occasion. Subject to Section 9.2, the payment of the fees and expenses set forth in this Section 9.3, and the provisions of Section 10.11, each of the Parties and their respective Affiliates shall have no liability, shall not be entitled to bring or maintain any other claim, action or proceeding against the other, shall be precluded from any other remedy against the other, at law or in equity or otherwise, and shall not seek to obtain any recovery, judgment or damages of any kind against the other (or any partner, member, stockholder, director, officer, employee, Subsidiary, affiliate, agent or other representative of such Party) in connection with or arising out of the termination of this Agreement, any breach by any Party giving rise to such termination or the failure of the Merger and the other Contemplated Transactions to be consummated. Each of the Parties acknowledges that (i) the agreements contained in this Section 9.3 are an integral part of the Contemplated Transactions, (ii) without these agreements, the Parties would not enter into this Agreement and (iii) any amount payable pursuant to this Section 9.3 is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate the Parties in the circumstances in which such amount is payable.

Section 10. MISCELLANEOUS PROVISIONS

10.1 Non-Survival of Representations and Warranties . The representations and warranties of CombiMatrix, Merger Sub and Invitae 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 Section 10 shall survive the Effective Time.

10.2 Amendment . This Agreement may be amended with the approval of the respective Boards of Directors of CombiMatrix, Merger Sub and Invitae at any time (whether before or after the adoption and approval of the Merger Proposal by CombiMatrix's stockholders); *provided, however*, that after any such adoption and approval of the Merger Proposal by the CombiMatrix stockholders, no amendment shall be made which by law requires further approval of the CombiMatrix stockholders 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 CombiMatrix, Merger Sub and Invitae.

10.3 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.

10.4 Entire Agreement; Counterparts; Exchanges by Facsimile or Electronic Transmission . 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. 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 facsimile or electronic transmission in .PDF format shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

10.5 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 suit between any of the Parties arising out of or relating to this Agreement or any of the Contemplated Transactions: (a) each of the Parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in the State of Delaware; (b) if any such action or suit is commenced in a state court, then, subject to applicable Legal Requirements, no Party shall object to the removal of such action or suit to any federal court located in the District of Delaware; and (c) each of the Parties irrevocably waives the right to trial by jury.

10.6 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.

10.7 Assignability; No Third Party Beneficiaries . This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties 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 Parties, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by such Party without the other Parties' 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 the Parties and the D&O Indemnified Parties 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.

10.8 Notices . Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered by hand, by registered mail, by courier or express delivery service or by facsimile to the address or facsimile number set forth beneath the name of such Party below (or to such other address or facsimile number as such Party shall have specified in a written notice given to the other Parties):

if to Invitae or Merger Sub:

Invitae Corporation
1400 16th Street
San Francisco, California 94103
Attention: Chief Financial Officer

with a copy to:

Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300
San Diego, California 92130
Fax: (858) 509-4010
Attention: Mike Hird

if to CombiMatrix:

CombiMatrix Corporation
300 Goddard, Suite 100
Irvine, California 92618
Fax: 949.753.1504
Attention: Chief Financial Officer

with a copy to:

Stradling Yocca Carlson & Rauth, P.C.
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Email: pschweich@sycr.com
Attention: Parker Schweich

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

10.10 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.

10.11 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 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 in addition to any other remedy to which they are entitled at law or in equity, and each of the Parties waives any bond, surety or other security that might be required of any other Party with respect thereto.

10.12 Construction .

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

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

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

(d) 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 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.

[Remainder of page intentionally left blank]

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

INVITAE CORPORATION

By: /s/ Lee Bendekgey
Name: Lee Bendekgey
Title: Chief Operating Officer

CORONADO MERGER SUB, INC.

By: /s/ Lee Bendekgey
Name: Lee Bendekgey
Title: Chief Executive Officer

COMBIMATRIX CORPORATION

By: /s/ Mark McDonough
Name: Mark McDonough
Title: President & Chief Executive Officer

Exhibits:

| | |
|-------------|---|
| Exhibit A | Certain Definitions |
| Exhibit B-1 | Form of Transaction Bonus Payout Agreement (Executive Officers) |
| Exhibit B-2 | Form of Transaction Bonus Payout Agreement (Directors) |

EXHIBIT A

CERTAIN DEFINITIONS

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

“**2006 Plan**” shall have the meaning set forth in Section 2.3(c).

“**ACA**” shall have the meaning set forth in Section 2.13(p).

“**Accounting Firm**” shall have the meaning set forth in Section 1.6(e).

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

“**Acquisition Agreement**” shall have the meaning set forth in Section 4.4(a).

“**Acquisition Inquiry**” shall mean an inquiry, indication of interest or request for information (other than an inquiry, indication of interest or request for information made or submitted by or on behalf of Invitae) that could reasonably be expected to lead to an Acquisition Proposal.

“**Acquisition Proposal**” shall mean any offer or proposal (other than an offer or proposal made or submitted by or on behalf of Invitae), whether written or oral, contemplating or otherwise relating to any Acquisition Transaction.

“**Acquisition Transaction**” shall mean any transaction or series of transactions involving:

- any merger, consolidation, amalgamation, share exchange, business combination, issuance of securities, acquisition of securities, reorganization, recapitalization, tender offer, exchange offer or other similar transaction: (i) in which CombiMatrix is a constituent corporation; (ii) in which a Person or “group” (as defined in the Exchange Act and the rules promulgated thereunder) of Persons directly or indirectly acquires beneficial or record ownership of securities representing more than 20% of the outstanding securities of any class of voting securities of CombiMatrix or any of its Subsidiaries; or (iii) in which CombiMatrix or any of its Subsidiaries issues securities representing more than 20% of the outstanding securities of any class of voting securities of CombiMatrix or any of its Subsidiaries;
- any sale, lease, exchange, transfer, license, acquisition or disposition of any business or businesses or assets that constitute or account for 20% or more of the consolidated book value or the fair market value of the assets of CombiMatrix and its Subsidiaries, taken as a whole; or
- any liquidation or dissolution of CombiMatrix.

“ *Affiliates* ” shall have the meaning for such term as used in Rule 145 under the Securities Act.

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

“ *Allocation Certificate* ” shall have the meaning set forth in Section 5.16.

“ *Anticipated Closing Date* ” shall have the meaning set forth in Section 1.6(a).

“ *BIS* ” shall have the meaning set forth in Section 2.11(o).

“ *Business Day* ” shall mean any day other than a day on which banks in the State of California are authorized or obligated to be closed.

“ *CAP* ” shall have the meaning set forth in Section 2.11(b).

“ *Certificate of Merger* ” shall have the meaning set forth in Section 1.3.

“ *CLIA* ” shall mean the Clinical Laboratory Improvement Amendments, 42 C.F.R. Part 493, and all regulations promulgated thereunder.

“ *Closing* ” shall have the meaning set forth in Section 1.3.

“ *Closing Date* ” shall have the meaning set forth in Section 1.3.

“ *CMDX* ” shall have the meaning set forth in Section 5.4(a).

“ *CMDX 2005 Plan* ” shall have the meaning set forth in Section 5.4(a).

“ *COBRA* ” shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, as set forth in Section 4980B of the Code and Part 6 of Title I of ERISA.

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

“ *Collaboration Partner* ” shall mean any Person that co-develops or co-markets (or has a license to develop, market or sell) any product, technology or service of CombiMatrix or any CombiMatrix Subsidiary.

“ *CombiMatrix* ” shall have the meaning set forth in the Preamble.

“ *CombiMatrix 401(k) Plan* ” shall have the meaning set forth in Section 5.5.

“ *CombiMatrix 409A Plan* ” shall have the meaning set forth in Section 2.13(f).

“ *CombiMatrix Affiliate* ” shall mean any Person that is (or at any relevant time was) under common control with CombiMatrix within the meaning of Sections 414(b), (c), (m) and (o) of the Code, and the regulations issued thereunder.

“ **CombiMatrix Associate** ” shall mean any current or former employee, independent contractor, officer or director of CombiMatrix or any CombiMatrix Affiliate.

“ **CombiMatrix Board Adverse Recommendation Change** ” shall have the meaning set forth in Section 5.2(c).

“ **CombiMatrix Board of Directors** ” shall mean the board of directors of CombiMatrix.

“ **CombiMatrix Board Recommendation** ” shall have the meaning set forth in Section 5.2(b).

“ **CombiMatrix Capital Stock** ” shall mean the CombiMatrix Common Stock and the CombiMatrix Preferred Stock.

“ **CombiMatrix Certifications** ” shall have the meaning set forth in Section 2.4(a).

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

“ **CombiMatrix Contract** ” shall mean any Contract: (a) to which CombiMatrix or any of its Subsidiaries is a Party; (b) by which CombiMatrix or any CombiMatrix Subsidiary or any CombiMatrix IP Rights or any other asset of CombiMatrix or any of its Subsidiaries is or may become bound or under which CombiMatrix or any CombiMatrix Subsidiary has, or may become subject to, any obligation; or (c) under which CombiMatrix or CombiMatrix Subsidiary has or may acquire any right or interest.

“ **CombiMatrix D&O Policies** ” shall have the meaning set forth in Section 2.15(b).

“ **CombiMatrix Disclosure Schedule** ” shall have the meaning set forth in Section 2.

“ **CombiMatrix Employee Plan** ” shall have the meaning set forth in Section 2.13(d).

“ **CombiMatrix IP Rights** ” shall mean all Intellectual Property owned, licensed or controlled by CombiMatrix or any of its Subsidiaries that is necessary or used in the business of CombiMatrix or any of its Subsidiaries as presently conducted or as presently proposed to be conducted.

“ **CombiMatrix IP Rights Agreement** ” shall mean any instrument or agreement governing, related or pertaining to any CombiMatrix IP Rights.

“ **CombiMatrix Material Adverse Effect** ” shall mean any Effect that, considered together with all other Effects that have occurred prior to the date of determination of the occurrence of the CombiMatrix Material Adverse Effect, is or could reasonably be expected to be materially adverse to, or has or could reasonably be expected to have or result in a material adverse effect on: (a) the business, condition (financial or otherwise), capitalization, assets (including Intellectual Property), operations or financial performance of CombiMatrix and its Subsidiaries taken as a whole; or (b) the ability of CombiMatrix to consummate the Merger or any of the other Contemplated Transactions or to perform any of its covenants or obligations under the Agreement in all material

respects; *provided, however*, that Effects from the following shall not be deemed to constitute (nor shall Effects from any of the following be taken into account in determining whether there has occurred) a CombiMatrix Material Adverse Effect: (i) any rejection by a Governmental Body of a registration or Filing by CombiMatrix relating to the CombiMatrix IP Rights; (ii) any change in the cash position of CombiMatrix which results from operations in the Ordinary Course of Business; (iii) conditions generally affecting the industries in which CombiMatrix and its Subsidiaries participate or the United States or global economy or capital markets as a whole, to the extent that such conditions do not have a disproportionate impact on CombiMatrix and its Subsidiaries taken as a whole; (iv) any failure by CombiMatrix or any of its Subsidiaries to meet internal projections or forecasts or third party revenue or earnings predictions for any period ending (or for which revenues or earnings are released) on or after the date of this Agreement (it being understood, however, that any Effect causing or contributing to any such failure to meet projections or predictions or any change in stock price or trading volume may constitute a CombiMatrix Material Adverse Effect and may be taken into account in determining whether a CombiMatrix Material Adverse Effect has occurred); (v) the execution, delivery, announcement or performance of the obligations under this Agreement or the announcement, pendency or anticipated consummation of the Merger; (vi) any natural disaster or any acts of terrorism, sabotage, military action or war or any escalation or worsening thereof, to the extent that any such event does not have a disproportionate impact on CombiMatrix and its Subsidiaries taken as a whole; (vii) changes in regulatory, legislative or political conditions in the United States or any other country or region in the world, to the extent that such changes do not have a disproportionate impact on CombiMatrix and its Subsidiaries taken as a whole; (viii) changes in conditions in the financial markets, credit markets or capital markets in the United States or any other country or region in the world, to the extent that such changes do not have a disproportionate impact on CombiMatrix and its Subsidiaries taken as a whole, including (1) changes in interest rates or credit ratings in the United States or any other country; (2) changes in exchange rates for the currencies of any country; or (3) any suspension of trading in securities (whether equity, debt, derivative or hybrid securities) generally on any securities exchange or over-the-counter market operating in the United States or any other country or region in the world; or (ix) any changes (after the date of this Agreement) in GAAP or applicable Legal Requirements, to the extent that such changes do not have a disproportionate impact on CombiMatrix and its Subsidiaries taken as a whole.

“ **CombiMatrix Material Contract** ” shall have the meaning set forth in Section 2.9.

“ **CombiMatrix Options** ” shall mean options or other rights to purchase shares of CombiMatrix Common Stock issued or granted by CombiMatrix.

“ **CombiMatrix PIPE Warrants** ” shall mean the CombiMatrix warrants exercisable for shares of CombiMatrix Common Stock at current per share exercise prices of \$16.50 and \$32.51 that expire on August 13, 2020.

“ **CombiMatrix Preferred Stock** ” shall have the meaning set forth in Section 2.3(a).

“ **CombiMatrix Registered IP** ” shall mean all CombiMatrix IP Rights that are registered, filed or issued under the authority of, with or by any Governmental Body, including all patents, registered copyrights and registered trademarks and all applications for any of the foregoing.

“ **CombiMatrix Regulatory Permits** ” shall have the meaning set forth in Section 2.11(c).

“ **CombiMatrix RSUs** ” shall mean the right to receive shares of CombiMatrix Common Stock upon settlement of such award issued or granted by CombiMatrix.

“ **CombiMatrix SEC Documents** ” shall have the meaning set forth in Section 2.4(a).

“ **CombiMatrix Series A Warrants** ” shall mean the CombiMatrix warrants exercisable for shares of CombiMatrix Common Stock (i) at a current per share exercise price of \$29.55 that expire on October 1, 2018 and (ii) at a current per share exercise price of \$30.90 that expire on April 1, 2018.

“ **CombiMatrix Series B Warrants** ” shall mean the CombiMatrix warrants exercisable for shares of CombiMatrix Common Stock at a current per share exercise price of \$29.55 that expire on March 20, 2019.

“ **CombiMatrix Series C Warrants** ” shall mean the CombiMatrix warrants exercisable for shares of CombiMatrix Common Stock at a current per share exercise price of \$29.55 that expire on May 6, 2019 and June 28, 2019.

“ **CombiMatrix Series D Warrants** ” shall mean the CombiMatrix warrants exercisable for shares of CombiMatrix Common Stock at a current per share exercise price of \$46.80 that expire on December 19, 2018.

“ **CombiMatrix Series E Warrants** ” shall mean the CombiMatrix warrants exercisable for shares of CombiMatrix Common Stock at a current per share exercise price of \$16.50 that expire on August 18, 2020.

“ **CombiMatrix Series F Preferences Certificate** ” shall have the meaning set forth in Section 2.3(f).

“ **CombiMatrix Series F Preferred Stock** ” shall mean the 8,000 shares of CombiMatrix convertible preferred stock, par value \$0.001 per share, which have been designated as Series F pursuant to the Certificate of Designation of Preferences, Rights and Limitations of Series F Convertible Preferred Stock.

“ **CombiMatrix Series F Warrants** ” shall mean the CombiMatrix warrants exercisable for shares of CombiMatrix Common Stock at a current per share exercise price of \$5.17 that expire on March 24, 2021.

“ **CombiMatrix Stock Certificate** ” shall have the meaning set forth in Section 1.7.

“ **CombiMatrix Stockholders ' Meeting** ” shall have the meaning set forth in Section 5.2(a).

“ **CombiMatrix Transaction Bonus Payout Agreements** ” shall mean each of (i) the Transaction Bonus Plan Agreements in the form substantially attached hereto as Exhibit B-1, entered into with each of the executive officers and the Vice President of Billing & Reimbursement of CombiMatrix concurrently with the execution of this Agreement, and (ii) the Transaction Bonus Plan Agreements in the form substantially attached hereto as Exhibit B-2, entered into with each of the outside directors of CombiMatrix concurrently with the execution of this Agreement.

“ **CombiMatrix Transaction Bonus Plan** ” shall mean the Transaction Bonus Plan of CombiMatrix which was adopted on December 2, 2015 which provides for certain bonus payments to be made, upon the consummation of a qualifying change of control transaction, to certain employees of CombiMatrix as determined from time to time by the compensation committee of the CombiMatrix Board of Directors.

A “ **CombiMatrix Triggering Event** ” shall be deemed to have occurred if: (i) the CombiMatrix Board of Directors shall have failed to recommend that CombiMatrix’s stockholders vote to adopt and approve the Merger Proposal or shall for any reason have withdrawn or shall have modified in a manner adverse to Invitae the CombiMatrix Board Recommendation; (ii) CombiMatrix shall have failed to include in the Proxy Statement/Prospectus the CombiMatrix Board Recommendation; (iii) the CombiMatrix Board of Directors shall have approved, endorsed or recommended any Acquisition Proposal; (iv) CombiMatrix shall have entered into any letter of intent or similar document or any Contract relating to any Acquisition Proposal (other than a confidentiality agreement permitted pursuant to Section 4.4); or (v) CombiMatrix or any Representative of CombiMatrix shall have breached the provisions set forth in Section 4.4 of the Agreement.

“ **CombiMatrix Unaudited Interim Balance Sheet** ” shall mean the unaudited consolidated balance sheet of CombiMatrix and its consolidated Subsidiaries as of April 30, 2017, provided to Invitae prior to the date of this Agreement.

“ **CombiMatrix Warrant Repurchase** ” shall have the meaning set forth in Section 5.4(b).

“ **CombiMatrix Warrants** ” shall have the meaning set forth in Section 2.3(a).

“ **Confidentiality Agreement** ” shall mean the Mutual Confidentiality Agreement and Standstill Agreement made on May 6, 2016 by and between CombiMatrix and Invitae.

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

“ **Contemplated Transactions** ” shall mean the Merger, the Warrant Exchange Offer, the CombiMatrix Warrant Repurchase, the termination of all outstanding CombiMatrix Options immediately prior to the Effective Time, and the other transactions and actions contemplated by the Agreement.

“ **Contract** ” shall, with respect to any Person, mean any written agreement, contract, subcontract, lease (whether real or personal property), mortgage, understanding, arrangement, instrument, note, option, warranty, purchase order, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature to which such Person is a party or by which such Person or any of its assets are bound or affected under applicable law.

“ **Converted CombiMatrix Options** ” shall have the meaning set forth in Section 5.4(a).

“ **D&O Indemnified Parties** ” shall have the meaning set forth in Section 5.6(a).

“ **Data** ” shall mean all data, information, databases, data files and other collections of data, including patient data, case study data, expression level data and risk outcomes, as well as all documentation and media on which any of the foregoing is recorded.

“ **Data Security Requirements** ” shall mean, collectively, all of the following, to the extent relating to privacy or data security and applicable to CombiMatrix or any CombiMatrix Subsidiary or to the business of CombiMatrix or any CombiMatrix Subsidiary as presently conducted and as presently proposed to be conducted: (i) CombiMatrix’s own rules, policies, and procedures; (ii) all applicable Legal Requirements; (iii) industry standards applicable to the industry in which CombiMatrix or any CombiMatrix Subsidiary operates; and (iv) Contracts into which CombiMatrix or any CombiMatrix Subsidiary has entered or by which CombiMatrix or any CombiMatrix Subsidiary is otherwise bound.

“ **Determination Date** ” shall have the meaning set forth in Section 1.6(a).

“ **DGCL** ” shall mean the General Corporation Law of the State of Delaware.

“ **Dispute Notice** ” shall have the meaning set forth in Section 1.6(b).

“ **Effect** ” shall mean any effect, change, event, circumstance, or development.

“ **Effective Time** ” shall have the meaning set forth in Section 1.3.

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

“ **End Date** ” shall have the meaning set forth in Section 9.1(b).

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

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

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

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Exchange Agent**” shall have the meaning set forth in Section 1.8(a).

“**Exchange Fund**” shall have the meaning set forth in Section 1.8(a).

“**Exchange Ratio**” shall mean, subject to Section 1.5(f), the greater of **X** or **Y**, where:

X = The *quotient* obtained by dividing **A** by **B** where:

A = The Invitae Merger Shares; and

B = The CombiMatrix Outstanding Shares,

and where:

- “**Adjusted Aggregate Value**” means the *sum* of (i) \$27,000,000, *plus or minus* (ii) Net Cash (determined pursuant to Section 1.6).
- “**CombiMatrix Outstanding Shares**” means the total number of shares of CombiMatrix Capital Stock outstanding immediately prior to the Effective Time expressed on a fully diluted and as-converted to CombiMatrix Common Stock basis and assuming, without limitation, (i) the settlement of all CombiMatrix RSUs, whether unvested or vested, as of immediately prior to the Effective Time, (ii) the cash exercise of all CombiMatrix Options outstanding as of immediately prior to the Effective Time (*i.e.* , to the extent not terminated without the right to receive any consideration as contemplated for out-of-the-money CombiMatrix Options by Section 5.4(a)), (iii) the cash exercise of all CombiMatrix Series F Warrants outstanding as of the Effective Time (*i.e.* , to the extent not exchanged in the Warrant Exchange Offer or exercised prior to consummation of the Warrant Exchange Offer), (iv) the conversion of all CombiMatrix Series F Preferred Stock outstanding as of the Effective Time and (v) the issuance of shares of CombiMatrix Common Stock in respect of all other options, warrants, convertible securities or rights to receive such shares, whether conditional or unconditional and including any options, warrants, convertible securities or rights triggered by or associated with the consummation of the Merger; *provided that*, notwithstanding the foregoing, the following shares of CombiMatrix Common Stock shall be excluded from such total: (x) shares of CombiMatrix Common Stock issuable upon exercise of the CombiMatrix Series D Warrants so long as the terms of the CombiMatrix Series D Warrants have not been modified following the date of this Agreement; (y) shares of CombiMatrix Common Stock issuable upon exercise of the CombiMatrix Series F Warrants that are exchanged in the Warrant Exchange Offer; and (z) Terminated CombiMatrix Options.

- “**Invitae Merger Shares**” mean a total number of shares of Invitae Common Stock equal to the *quotient* determined by *dividing* the Adjusted Aggregate Value by the Invitae Trailing Average Share Value.
- “**Invitae Trailing Average Share Value**” means the average closing price for shares of Invitae Common Stock on the NYSE (or any other exchange which is then the primary exchange upon which shares of Invitae Common Stock are traded) for the immediately preceding period of thirty (30) trading days prior to the date of this Agreement.

As an example, if Net Cash is \$0.00, the CombiMatrix Outstanding Shares amount is 3,750,000 and the Invitae Trailing Average Share Value is \$9.00, then **X** would be determined as follows:

$$X = \frac{\left(\frac{\text{Adjusted Aggregate Value}}{\text{Invitae Trailing Average Share Value}} \right)}{\text{Coronado Outstanding Shares}} = \frac{\left(\frac{\$27,000,000 \pm \text{Net Cash}}{\text{Invitae Trailing Average Share Value}} \right)}{\text{Coronado Outstanding Shares}}$$

$$X = \frac{\left(\frac{[\$27,000,000 \pm \$0]}{\$9.00} \right)}{3,750,000} = \frac{3,000,000}{3,750,000} = 0.80$$

The Exchange Ratio would thus be 0.80 shares of Invitae Common Stock issuable per share of CombiMatrix Common Stock, subject to **Y** (below) being greater.

Y = The *quotient* obtained by dividing (x) the *sum* of (i) \$8.25 *minus* (ii) the Adjustment Amount, by (y) the Invitae Trailing Average Share Value, where

- “**Adjustment Amount**” means the *quotient* represented by **C** *divided by* **D**, where
 - C** = The *sum* of the following:
 - (i) the amount, if any, by which Net Cash (determined pursuant to Section 1.6, but not taking into account any gross proceeds from exercises of CombiMatrix Series F Warrants after the date of this Agreement) is below (x) negative \$1,000,000.00 if the aggregate payouts in shares of Invitae Common Stock (calculated using the Invitae Trailing Average Share Value) pursuant to the CombiMatrix Transaction Bonus Plan Agreements will be greater than \$2,000,000, and otherwise (y) \$0.00, *plus*
 - (ii) the *product* of \$8.25 *multiplied by* the *sum*, if any, of (x) any shares of CombiMatrix Common Stock that are issued or that become issuable (including upon any conversion or exercise of any securities) after the date of this Agreement (other than pursuant to conversion or exercise of any securities outstanding as of the date of this Agreement) *plus* (y) the excess, if any, of (A) the total number of shares of CombiMatrix Common Stock actually outstanding as of

the date of this Agreement over (B) the total number of shares of CombiMatrix Common Stock represented to be outstanding as of the date of this Agreement pursuant to Section 2.3, calculated in each instance on a fully diluted and as-converted/as-exercised to CombiMatrix Common Stock basis but excluding shares issuable upon the exercise of Terminated CombiMatrix Options or CombiMatrix Warrants subject to the CombiMatrix Warrant Repurchase; and

D = The CombiMatrix Outstanding Shares.

As an example, if Net Cash (excluding CombiMatrix Series F Warrant proceeds) is negative \$1,285,000 (and the aggregate payouts in shares of Invitae Common Stock (calculated using the Invitae Trailing Average Share Value) pursuant to the CombiMatrix Transaction Bonus Plan Agreements will be greater than \$2,000,000), there are 20,000 shares of CombiMatrix Common Stock issued or that become issuable after the date of this Agreement (other than pursuant to conversion or exercise of any securities outstanding as of the date of this Agreement), the represented capitalization of CombiMatrix pursuant to Section 2.3 as of the date of this Agreement is accurate, the Invitae Trailing Average Share Value is \$9.00 and **D** is 3,000,000, then **Y** would be determined as follows:

$$Y = \frac{\$8.25 - \text{Adjustment Amount}}{\text{India Trailing Average Share Value}} = \frac{\$8.25 - \left(\frac{C}{\text{Coronado Outstanding Shares}} \right)}{\text{India Trailing Average Share Value}}$$

$$Y = \frac{\$8.25 - \left[\frac{(\$1,285,000 - \$1,000,000) + (20,000)(\$8.25)}{3,000,000} \right]}{\$9.00}$$

$$Y = \frac{\$8.25 - \left[\frac{\$285,000 + \$165,000}{3,000,000} \right]}{\$9.00} = \frac{\$8.25 - \left[\frac{\$450,000}{3,000,000} \right]}{\$9.00} = \frac{\$8.25 - \$0.15}{\$9.00} = \frac{\$8.10}{\$9.00} = 0.90$$

The Exchange Ratio would thus be 0.90 shares of Invitae Common Stock issuable per share of CombiMatrix Common Stock, subject to **X** (above) being greater.

“**FCPA**” shall have the meaning set forth in Section 2.11(n).

“**FDA**” shall mean the United States Food and Drug Administration or any successor entity.

“**Filing**” shall mean any registration, petition, statement, application, schedule, form, declaration, notice, notification, report, submission or information or other filing.

“**Form S-4 Merger Registration Statement**” shall mean the registration statement on Form S-4 to be filed with the SEC by Invitae registering the public offering and sale of Invitae Common Stock to some or all holders of CombiMatrix Common Stock in the Merger, including all shares of Invitae Common Stock to be issued in exchange for all shares of CombiMatrix Capital Stock in the Merger, as said registration statement may be amended prior to the time it is declared effective by the SEC.

“ **Form S-4 Warrant Exchange Offer Registration Statement** ” shall have the meaning set forth in Section 5.1(b).

“ **FSE List** ” shall have the meaning set forth in Section 2.11(o).

“ **GAAP** ” shall have the meaning set forth in Section 2.4(b).

“ **Government Official** ” shall mean any official, officer, employee, or representative of any Governmental Authority or instrumentality thereof, or for or on behalf of a public international organization within the meaning of the FCPA, as well as any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

“ **Governmental Authority** ” shall mean any court or tribunal, governmental, quasi-governmental or regulatory body, administrative agency or bureau, commission or authority or other body exercising similar powers or authority.

“ **Governmental Authorization** ” shall mean any: (a) permit, license, certificate, franchise, permission, variance, exceptions, orders, clearance, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement (including 510(k)s, pre-market approval applications approved by the FDA in accordance with 21 U.S.C. § 360(e) and 21 C.F.R. Part 814, Investigational Device Exemptions, Medicare, Medicaid and other provider numbers, state laboratory licenses, CLIA and DEA certifications and other permits, as well as corresponding foreign permits and licenses); or (b) right under any Contract with any Governmental Body.

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

“ **Grant Date** ” shall have the meaning set forth in Section 2.13(e).

“ **Hazardous Materials** ” shall mean any pollutant, chemical, substance and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical, or chemical compound, or hazardous substance, material or waste, whether solid, liquid or gas, that is subject to regulation, control or remediation under any Environmental Law, including crude oil or any fraction thereof, and petroleum products or by-products.

“ **Health Authority** ” shall mean the Governmental Authorities that administer Health Laws, including the FDA.

“ **Health Law** ” shall mean any Legal Requirement applicable to the products, technology and services of CombiMatrix or any CombiMatrix Subsidiary, including any Legal Requirement the purpose of which is to ensure the safety, efficacy and quality of medical, pharmaceutical, biotechnology and similar products, technologies and services by regulating the research and development of these products, technologies and services, including Legal Requirements relating to good clinical practices, investigational use, record keeping and Filing of required reports. Without limiting the foregoing, Health Law includes (i) the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321 et seq., and all regulations promulgated thereunder, (ii) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (codified at 42 U.S.C. § 300gg and 29 U.S.C. § 1181 et seq. and 42 USC 1320d et seq.), (iii) the Federal Ethics in Patient Referrals Act, 42 U.S.C. § 1395nn, and all regulations promulgated thereunder (the “ **Stark Law** ”), (iv) the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and all regulations promulgated thereunder (the “ **Anti-Kickback Statute** ”), (v) the Federal False Claim Act, 31 U.S.C. § 3729, and all regulations promulgated thereunder, (vi) the Occupational Safety and Health Act, and all regulations promulgated thereunder (“ **OSHA** ”), (vii) CLIA, (viii) applicable Legal Requirements of the U.S. Drug Enforcement Administration (“ **DEA** ”), (ix) state anti-kickback, fee-splitting and patient brokering Legal Requirements, (x) all applicable state Information Privacy and Security Laws and (xi) state Legal Requirements governing self-referral and the licensure and operation of clinical laboratories.

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

“ **Information Privacy and Security Laws** ” shall mean all Legal Requirements concerning the privacy, protection, transfer or security of Personal Information, including any applicable Legal Requirement, and all regulations promulgated and guidance issued by Governmental Authorities (including staff reports) thereunder, including the following Legal Requirements and their implementing regulations or regulatory guidance, each as amended from time to time: HIPAA, guidance and regulations issued by the FDA regarding clinical trials or the de-identification of biological samples, the Federal Trade Commission Act, the CAN-SPAM Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, Children’s Online Privacy Protection Act, state data security laws, state social security number protection laws, state data breach notification laws, state consumer protection laws, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the related national implementing laws and regulations of the European Union Member States, any Legal Requirements pertaining to privacy or data security of health information, genetic information or biological samples, and any applicable Legal Requirements concerning requirements for website and mobile application privacy policies and practices, call or electronic monitoring or recording or any outbound communications (including outbound calling and text messaging, telemarketing, and email marketing).

“ **Intellectual Property** ” shall mean (a) United States, foreign and international patents, patent applications, including provisional applications, statutory invention registrations, invention disclosures and inventions, (b) trademarks, service marks, trade names, domain names, URLs, trade dress, logos and other source identifiers, including registrations and applications for registration thereof, (c) copyrights, including registrations and applications for registration thereof, and (d) software, formulae, customer lists, trade secrets, know-how, confidential information and other proprietary rights and intellectual property, whether patentable or not.

“ **Invitae** ” shall have the meaning set forth in the Preamble.

“ **Invitae Board of Directors** ” shall mean the board of directors of Invitae.

“ **Invitae Certifications** ” shall have the meaning set forth in Section 3.3(a).

“ **Invitae Common Stock** ” shall mean the Common Stock, \$0.0001 par value per share, of Invitae.

“ **Invitae Disclosure Schedule** ” shall have the meaning set forth in Section 3.

“ **Invitae Material Adverse Effect** ” shall mean any Effect that, considered together with all other Effects that have occurred prior to the date of determination of the occurrence of the Invitae Material Adverse Effect, is or could reasonably be expected to be or to become materially adverse to, or has or could reasonably be expected to have or result in a material adverse effect on: (a) the business, condition (financial or otherwise), capitalization, assets, operations or financial performance of Invitae; or (b) the ability of Invitae to consummate the Merger or any of the other Contemplated Transactions or to perform any of its covenants or obligations under the Agreement in all material respects; *provided, however*, that Effects from the following shall not be deemed to constitute (nor shall Effects from any of the following be taken into account in determining whether there has occurred) an Invitae Material Adverse Effect: (i) conditions generally affecting the industries in which Invitae participates or the United States or global economy or capital markets as a whole, to the extent that such conditions do not have a disproportionate impact on Invitae; (ii) any failure by Invitae to meet internal projections or forecasts or third party revenue or earnings predictions for any period ending (or for which revenues or earnings are released) on or after the date of this Agreement or any change in the price or trading volume of Invitae Common Stock (it being understood, however, that any Effect causing or contributing to any such failure to meet projections or predictions or any change in stock price or trading volume may constitute an Invitae Material Adverse Effect and may be taken into account in determining whether an Invitae Material Adverse Effect has occurred); (iii) the execution, delivery, announcement or performance of the obligations under this Agreement or the announcement, pendency or anticipated consummation of the Merger; (iv) any natural disaster or any acts of terrorism, sabotage, military action or war or any escalation or worsening thereof, to the extent that any such event does not have a disproportionate impact on Invitae; (v) changes in regulatory, legislative or political conditions in the United States or any other country or region in the world, to the extent that such changes do not have a disproportionate impact on Invitae; (vi) changes in conditions in the financial markets, credit markets or capital markets in the United States or any other country or region in the world, to the extent that such changes do not have a disproportionate impact on Invitae, including (1) changes in interest rates or credit ratings in the United States or any other country; (2) changes in exchange rates for the currencies of any country; or (3) any suspension of trading in securities (whether equity, debt, derivative or hybrid securities) generally on any securities exchange or over-the-counter market operating in the United States or any other country or region in the world; or (vii) any changes (after the date of this Agreement) in GAAP or applicable Legal Requirements, to the extent that such changes do not have a disproportionate impact on Invitae.

“ **Invitae SEC Documents** ” shall have the meaning set forth in Section 3.4(a).

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

“ **IT Assets** ” shall mean computers, storage media, databases, applications, websites, software, servers, workstations, routers, hubs, switches, circuits, networks, computer network equipment or systems, data communications lines, and all other information technology equipment including parts of any of the foregoing such as firmware, screens, terminals, disks, cabling, related infrastructure, and other peripheral and associated electronic equipment and services owned, controlled, used, or held for use by or on behalf of any Acquired Corporation.

“ **Key Employee** ” shall mean the Chief Executive Officer and the Chief Financial Officer of CombiMatrix-as well as employee who reports directly to either such officer.

“ **Knowledge** ” shall mean, with respect to an individual, that such individual is actually aware of the relevant fact or such individual would reasonably be expected to know such fact in the ordinary course of the performance of the individual’s employee or professional responsibility. Any Person that is an Entity shall have Knowledge if any officer or director of such Person as of the date such knowledge is imputed has Knowledge of such fact or other matter, after reasonable inquiry.

“ **LDTs** ” shall have the meaning set forth in Section 2.11(j).

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

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

“ **Liability** ” shall have the meaning set forth in Section 2.10.

“ **Merger** ” shall have the meaning set forth in the recitals.

“ **Merger Consideration** ” shall have the meaning set forth in Section 1.5(a).

“ **Merger Proposal** ” shall have the meaning set forth in the recitals.

“ **Merger Sub** ” shall have the meaning set forth in the Preamble.

“ **Minimum Warrant Exchange Participation** ” shall have the meaning set forth in Section 5.1(b).

“ **Multiemployer Plan** ” shall mean (A) a “multiemployer plan,” as defined in Section 3(37) or 4001(a)(3) of ERISA, or (B) a plan which if maintained or administered in or otherwise subject to the laws of the United States would be described in paragraph (A).

“ **Multiple Employer Plan** ” shall mean (A) a “multiple employer plan” within the meaning of Section 413(c) of the Code or Section 3(40) of ERISA, or (B) a plan which if maintained or administered in or otherwise subject to the laws of the United States would be described in paragraph (A).

“ **NASDAQ** ” shall mean The Nasdaq Stock Market.

“ **Net Cash** ” shall mean the *sum* of the following:

- (a) CombiMatrix’s current assets (*i.e.* , cash and cash equivalents (inclusive of any cash resulting from exercises of CombiMatrix Options or CombiMatrix Series F Warrants), marketable securities, short-term investments, accounts receivable (but less allowance for doubtful accounts), deposits (to the extent refundable to CombiMatrix), supplies and prepaid expenses and other current assets (excluding deferred tax assets), in each case determined in a manner consistent with this Agreement or the manner, if applicable, in which such items were historically determined and in accordance with CombiMatrix’s Audited Financial Statements and Unaudited Interim Balance Sheet, *minus*
- (b) the sum of CombiMatrix’s accounts payable, accrued expenses and other current liabilities (other than accrued expenses listed below and deferred tax liabilities), capital lease obligations, secured promissory note payable and all other liabilities (including any amounts payable for the CombiMatrix Warrant Repurchase, any amounts payable in satisfaction of CombiMatrix’s obligations under Section 5.6(c), and any amounts that will become payable to participants pursuant to CombiMatrix’s Restated Executive Change of Control Severance Plan), in each case determined in a manner consistent with this Agreement to the extent applicable or the manner, if applicable, in which such items were historically determined and in accordance with CombiMatrix’s Audited Financial Statements and Unaudited Interim Balance Sheet, *minus*
- (c) the amount of \$250,000, *minus*
- (d) without double counting if otherwise included above, any unpaid fees and expenses (including any attorney’s, accountant’s, financial advisor’s or finder’s fees) incurred by CombiMatrix or any of its Subsidiaries in connection with this Agreement and the Contemplated Transactions or for which CombiMatrix or any of its Subsidiaries is otherwise liable, *minus*

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- (e) without double counting if otherwise included above, all amounts payable to any of CombiMatrix's employees, officers, directors, consultants, advisors and representatives in connection with this Agreement and the Contemplated Transactions (including pursuant to the CombiMatrix Transaction Bonus Plan), regardless of whether any recipient agrees to accept any portion of any such payment in equity (such as RSUs for shares of Invitae Common Stock pursuant to a CombiMatrix Transaction Bonus Payout Agreement) or cash, *minus*
 - (f) any fees and expenses payable by CombiMatrix pursuant to Section 1.6(e), *plus or minus*
 - (g) the amount of any reimbursement owed to, or owed by, CombiMatrix pursuant to Section 9.3(a).

“**Net Cash Calculation**” shall have the meaning set forth in Section 1.6(a).

“**Net Cash Schedule**” shall have the meaning set forth in Section 1.6(a).

“**NYSE**” shall have the meaning set forth in Section 3.2(b).

“**OFAC**” shall have the meaning set forth in Section 2.11(o).

“**Offer Documents**” shall have the meaning set forth in Section 5.1(b).

“**Open Source Software**” shall mean any software that is licensed pursuant to: (i) any license or other Contract that is approved by the Open Source Initiative and listed at <http://www.opensource.org/licenses>, which licenses include all versions of the GNU General Public License (GPL), the GNU Lesser General Public License (LGPL), the GNU Affero GPL, the BSD license, the MIT license, the Eclipse Public License, the Common Public License, the Mozilla Public License, and the Artistic License; or (ii) any license or other Contract under which software or other materials are distributed or licensed as “free software,” “open source software,” “public source code,” “freeware,” “shareware” or any similar terms.

“**Ordinary Course of Business**” shall mean such actions taken in the ordinary course of a Party's normal operations and consistent with its past practices, and with respect to CombiMatrix for periods following the date of this Agreement consistent with any operating plan of CombiMatrix delivered to Invitae.

“**Oxford Consent**” shall have the meaning set forth in Section 7.8.

“**Party**” or “**Parties**” shall mean CombiMatrix, Merger Sub and Invitae.

“**Payment Programs**” shall have the meaning set forth in Section 2.11(m).

“**PCI DSS**” shall mean the Payment Card Industry Data Security Standard, issued by the Payment Card Industry Security Standards Council, as may be revised from time to time.

“**Person**” shall mean any individual, Entity or Governmental Body.

“**Personal Information**” shall mean, collectively (i) a natural person’s name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver’s license number, passport number, credit card number, bank information, or customer or account number, biometric identifiers, health or genetic information, biological sample or any other piece of information that allows for the identification of that person or that person’s device, (ii) any other information defined as “personal data,” “personally identifiable information,” “individually identifiable health information,” “protected health information,” or “personal information” or any similar or comparable term under any Legal Requirement, or (iii) any information that is covered by the PCI DSS.

“**PII Consents**” shall have the meaning set forth in Section 2.11(p).

“**Pillsbury**” shall have the meaning set forth in Section 5.1(a).

“**Pre-Closing Period**” shall have the meaning set forth in Section 4.1.

“**Proxy Statement/Prospectus**” shall mean the prospectus to be provided to CombiMatrix’s stockholders in connection with the CombiMatrix Stockholders’ Meeting and the shares of Invitae Common Stock to be issued in the Merger.

“**Registration Statements**” shall mean the Form S-4 Merger Registration Statement and the Form S-4 Warrant Exchange Offer Registration Statement.

“**Representatives**” shall mean directors, officers, other employees, agents, attorneys, accountants, advisors and representatives.

“**Required CombiMatrix Stockholder Vote**” shall have the meaning set forth in Section 2.19.

“**Response Date**” shall have the meaning set forth in Section 1.6(b).

“**Restricted Parties**” shall have the meaning set forth in Section 2.11(o).

“**RSU**” shall mean restricted stock unit.

“**Sarbanes-Oxley Act**” shall mean the Sarbanes-Oxley Act of 2002, as it may be amended from time to time.

“**SDN List**” shall have the meaning set forth in Section 2.11(o).

“**SEC**” shall mean the United States Securities and Exchange Commission.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Security Risk Assessments**” shall have the meaning set forth in Section 2.11(t).

“**SSI List**” shall have the meaning set forth in Section 2.11(o).

“**Stockholder**” shall mean a stockholder of CombiMatrix, and “**Stockholders**” shall mean all stockholders of CombiMatrix.

“**Stradling**” shall have the meaning set forth in Section 5.1(a).

“**Subsequent Transaction**” shall mean any Acquisition Transaction that results or would result in any third party beneficially owning securities of CombiMatrix representing more than fifty percent (50%) of the voting power of the outstanding securities of CombiMatrix or owning or exclusively licensing tangible or intangible assets representing more than fifty percent (50%) of the fair market value of the income-generating assets of CombiMatrix and its Subsidiaries, taken as a whole; however, notwithstanding the foregoing, “Subsequent Transaction” shall not include any equity or debt financing entered into by CombiMatrix for bona fide capital raising purposes.

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

“**Superior Offer**” shall mean a bona fide written offer by a third party to enter into (i) a merger, consolidation, amalgamation, share exchange, business combination, issuance of securities, acquisition of securities, reorganization, recapitalization, tender offer, exchange offer or other similar transaction as a result of which either (A) CombiMatrix’s stockholders prior to such transaction in the aggregate cease to own at least 50% of the voting securities of the entity surviving or resulting from such transaction (or the ultimate parent entity thereof) or (B) in which a Person or “group” (as defined in the Exchange Act and the rules promulgated thereunder) directly or indirectly acquires beneficial or record ownership of securities representing 50% or more of CombiMatrix’s capital stock or (ii) a sale, lease, exchange transfer, license, acquisition or disposition of any business or other disposition of at least 50% of the assets of CombiMatrix and its Subsidiaries, taken as a whole, in a single transaction or a series of related transactions that (in each case of the foregoing clauses (i) and (ii)): (a) was not obtained or made as a direct or indirect result of a breach of (or in violation of) this Agreement (including Section 4.4); and (b) is on terms and conditions that the CombiMatrix Board of Directors determines, in its reasonable, good faith judgment, after obtaining and taking into account such matters that it deems relevant following consultation with its outside legal counsel and financial advisor, if any: (x) is reasonably likely to be more favorable, from a financial point of view, to CombiMatrix’s stockholders than the terms of the Merger; and (y) is reasonably capable of being consummated; *provided, however*, that any such offer shall not be deemed to be a “Superior Offer” if any financing required to consummate the transaction contemplated by such offer is not committed and is not reasonably capable of being obtained, or if the consummation of such transaction is contingent on any such financing being obtained.

“**Surviving Corporation**” shall have the meaning set forth in Section 1.1.

“**Tax**” shall mean any federal, state, local, foreign or other tax, including any income tax, franchise tax, capital gains tax, gross receipts tax, value-added tax, surtax, estimated tax, unemployment tax, national health insurance tax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, withholding tax, payroll tax, customs duty, alternative or add-on minimum or other tax of any kind whatsoever, and including any fine, penalty, addition to tax or interest, whether disputed or not.

“ **Tax Return** ” shall mean any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information, and any amendment or supplement to any of the foregoing, filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

“ **Terminated CombiMatrix Options** ” shall have the meaning set forth in Section 5.4(a).

“ **Termination Fee** ” shall have the meaning set forth in Section 9.3(b).

“ **Third Party Expenses** ” shall have the meaning set forth in Section 9.3(c).

“ **Trade Control Laws** ” shall have the meaning set forth in Section 2.11(o).

“ **Treasury Regulations** ” shall mean the United States Treasury regulations promulgated under the Code.

“ **Warrant Exchange Offer** ” shall have the meaning set forth in Section 5.1(b).

EXHIBIT B-1

TRANSACTION BONUS PAYOUT AGREEMENT
[Executives]

This TRANSACTION BONUS PAYOUT AGREEMENT (this “*Agreement*”) is entered into as of July 31, 2017 by and among Invitae Corporation, a Delaware corporation (“*Invitae*”), CombiMatrix Corporation, a Delaware corporation (“*CombiMatrix*”), and [●] (the “*Recipient*”). For purposes of this Agreement, the “*Invitae Group*” refers to Invitae, CombiMatrix and their respective affiliates.

WHEREAS, on December 2, 2015, CombiMatrix adopted the CombiMatrix Transaction Bonus Plan (the “*Transaction Bonus Plan*”) pursuant to which certain employees of CombiMatrix may receive transaction bonuses on a Qualifying Transaction (as defined in the Transaction Bonus Plan);

WHEREAS, the merger (the “*Merger*”) of Coronado Merger Sub, Inc., a Delaware corporation (“*Merger Sub*”), with and into CombiMatrix, with CombiMatrix continuing as the surviving corporation, pursuant to that Agreement and Plan of Merger, dated as of the date hereof (the “*Merger Agreement*”), by and among Invitae, CombiMatrix and Merger Sub, shall constitute a Qualifying Transaction under the Transaction Bonus Plan;

WHEREAS, one or more Recipients concurrently herewith have entered into Independent Contractor Agreements with Invitae to become effective as of the Closing Date (each an “*Independent Contractor Agreement*”); and

WHEREAS, Invitae and CombiMatrix desire to set forth herein the terms and conditions pursuant to which the Recipient’s right to be paid a transaction bonus as defined in the Transaction Bonus Plan (the “*Transaction Bonus*”) shall be settled in connection with the Merger.

NOW, THEREFORE, in consideration of the covenants and premises described in this Agreement and other valuable consideration, the sufficiency of which the parties hereby acknowledge, the parties, intending to be legally bound, agree as follows:

1. Effective Date. This Agreement is effective as of the date on which the closing of the Merger occurs (such date, the “*Closing Date*”). In the event that the Merger Agreement is terminated in accordance with its terms, this Agreement shall automatically be deemed null and void and of no further force and effect.
2. Transaction Bonus. Subject to the terms and conditions of this Agreement and the Transaction Bonus Plan as modified herein, Invitae shall grant the Recipient restricted stock units (“*RSUs*”) with respect to shares of Invitae Common Stock (as defined in the Merger Agreement) on the Closing Date (or as soon as practicable thereafter). The number of shares of Invitae Common Stock subject to such RSUs shall be equal to the dollar amount of the transaction bonus awarded to the Recipient under the Transaction Bonus Plan divided by the Invitae Trailing Average Share Value (as defined in the Merger Agreement). Such RSUs shall (a) be evidenced by, and subject to the terms of, an RSU award agreement in the form attached hereto as Exhibit A (the “*RSU Award*”).

Agreement"); (b) be settled in shares of Invitae Common Stock; and (c) vest upon the Closing Date and be settled in three equal monthly installments following the Closing Date in accordance with Section 5(j) of this Agreement, subject to acceleration of settlement upon a Change in Control (as defined in Invitae's 2015 Stock Incentive Plan); provided, however, that if the Recipient has an Independent Contractor Agreement in effect as of the Closing Date, then the shares shall vest as follows:

(i) On the Closing Date (or as soon thereafter as practical, subject to Section 5(j) of this Agreement), RSUs represented by (x) the dollar amount of the transaction bonus awarded to Recipient under the Transaction Bonus Plan minus \$[817,834-Mark/\$40,000-Scott], divided by (y) the Invitae Trailing Average Share Value shall vest and be settled; and

(ii) On the eight-month anniversary of the Closing Date, RSUs represented by \$[817,834-Mark/\$40,000-Scott] divided by the Invitae Trailing Average Share Value shall vest and be settled so long as the Recipient has rendered services as required by the Independent Contractor Agreement through the eight-month anniversary of the Closing Date except that, in the event of a Change in Control (as defined in Invitae's 2015 Stock Incentive Plan) or a termination pursuant to Section 9(a), 9(c) or 9(e) of the Independent Contractor Agreement, all unvested RSUs shall vest immediately and shall be settled within five days of the consummation of the Change in Control or termination of the Independent Contractor Agreement, as applicable.

The grant of RSUs in accordance with this Agreement shall constitute payment of the Transaction Bonus in full settlement of all of the Recipient's rights under the Transaction Bonus Plan, without regard to whether the Recipient ultimately earns or forfeits all or any portion of the RSUs subject to the grant. To the extent the shares of Invitae Common Stock underlying the RSUs are not covered by a registration statement that is effective before the Closing Date under the Securities Act of 1933, as amended (the "*Act*"), and if the Recipient has an Independent Contractor Agreement in effect as of the Closing Date, Invitae will use commercially reasonable efforts to file a registration statement on Form S-8 with the Securities and Exchange Commission for such shares within fifteen days after the Closing Date, and if the Recipient does not have an Independent Contractor Agreement in effect as of the Closing Date and Form S-8 is not otherwise available for such registration, Invitae will use commercially reasonable efforts to register the shares for resale as soon as reasonably practicable on a registration statement on Form S-3 or another appropriate form in accordance with the Act.

3. Conditions to Receipt of Transaction Bonus. The Recipient's right to receive RSUs is conditioned on the Recipient's execution of this Agreement and the Recipient's continued employment with CombiMatrix until immediately prior to the Closing Date.
4. Tax Withholding. Notwithstanding any provision herein to the contrary, prior to settlement of any RSUs the Recipient shall pay, or make arrangements satisfactory to Invitae to satisfy, all associated tax withholding and payment obligations in accordance with the terms of the RSU Award Agreement.

5. Miscellaneous.

- (a) *Entire Agreement; Amendment* . This Agreement and the Transaction Bonus Plan embody the entire agreement and understanding of the parties in respect of its subject matter and supersede all prior agreements and understandings between the parties with respect to such subject matter (whether or not written). In the event of a conflict between the provisions of this Agreement and the Transaction Bonus Plan, the provisions of this Agreement shall control and the Transaction Bonus Plan shall be deemed amended with the consent of the Recipient accordingly. This Agreement may be amended or modified only by written agreement signed by the parties.
- (b) *No Contract for Continuing Services* . This Agreement shall not be construed as creating any contract for continued services between the Invitae Group and the Recipient and nothing herein contained shall give the Recipient the right to be retained as an employee, consultant or director of the Invitae Group.
- (c) *No Transfers* . The Recipient's rights in the Transaction Bonus may not be assigned or transferred other than to the Recipient's heirs by reason of the Recipient's death.
- (d) *Governing Law* . This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to any principles of conflict of laws of such state that would require the application of the laws of any other jurisdiction.
- (e) *Enforceability* . If any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- (f) *Waiver* . No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
- (g) *Successors; Assignability* . This Agreement shall inure to the benefit of and be binding upon the parties, their respective successors, executors, administrators, heirs and permitted assigns; nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the parties and their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The Recipient may not assign, delegate or otherwise transfer any of the Recipient's rights or obligations under this Agreement. Invitae or CombiMatrix may transfer or assign, in whole or from time to time in part, to one or more of its affiliates, or to any successor to one or more of its businesses, its rights or obligations under this Agreement without the prior written consent signed by the Recipient.

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- (h) *Counterparts* . This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- (i) *Section 280G*. In the event that the payments and other benefits provided for in this Agreement or otherwise payable to the Recipient (i) constitute “parachute payments” within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder (the “ *Code* ”), and (ii) would be subject to the excise tax imposed by Section 4999 of the Code, then the Recipient’s payments and benefits under this Agreement or otherwise payable to the Recipient outside of this Agreement shall be either delivered in full (without CombiMatrix or Invitae paying any portion of such excise tax or any other additional amount), or delivered as to 2.99 times of the Recipient’s base amount (within the meaning of Section 280G of the Code) so as to result in no portion of such payments and benefits being subject to such excise tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and such excise tax, results in the receipt by the Recipient on an after-tax basis of the greatest amount of payments and benefits.
- (j) *Section 409A* . This Agreement is intended to comply with Section 409A of the Code (“ *Section 409A* ”) or an exemption therefrom and shall be interpreted, construed and administered in accordance with Section 409A or such exemption. To the extent that any amounts payable hereunder are determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A, such amounts shall be subject to such additional rules and requirements in order to comply with Section 409A and the settlement of any such amounts may not be accelerated or delayed except to the extent permitted by Section 409A. All vested payments shall be paid or settled by March 15 of the subsequent year and provided further that the Recipient shall have no discretion to designate the timing of such payments or settlements for purposes of Treasury Regulation Section 1.409A-3(b). The Invitae Group makes no representation or warranty and shall have no liability to the Recipient or any other person if any payments under any provisions of this Agreement are determined to constitute deferred compensation under Section 409A that are subject to the 20% tax under Section 409A.
- (k) *Cooperation*. The parties shall cooperate reasonably with each other, at the request of any party, to modify the arrangements contemplated by this Agreement so long as any such modified arrangements do not leave any party in a worse position (in such party’s sole discretion).

[*Signature page follows*]

IN WITNESS WHEREOF , the parties hereto have executed this Agreement on the date first written above.

COMBIMATRIX CORPORATION

By _____
Name:
Title:

INVITAE CORPORATION

By _____
Name:
Title:

RECIPIENT

Name:

Attachment: Exhibit A – Form of RSU Award Agreement

[*Signature Page to Executive Officer Transaction Bonus Payout Agreement*]

EXHIBIT A

INVITAE CORPORATION
NOTICE OF RESTRICTED STOCK UNIT AWARD

You have been granted the following Restricted Stock Units representing shares of common stock ("Shares") of Invitae Corporation (the "Company").

Name of Recipient: [NAME]
Total Number of Restricted Stock Units Granted: [SHARES GRANTED]
Grant Date: [EFFECTIVE DATE]
Vesting Commencement Date: [EFFECTIVE DATE]
Vesting Schedule: Vesting of this award (this "Award") shall occur pursuant to the vesting schedule set forth in Section 2 of that certain Transaction Bonus Payout Agreement dated [], 2017, entered into between the Company and the Recipient (the "Transaction Bonus Payout Agreement"), a copy of which is attached hereto.

By your signature and the signature of the Company's representative below, you and the Company agree that this Restricted Stock Unit Award is granted under and governed by the term and conditions of the attached Restricted Stock Unit Agreement (the "Agreement") and Transaction Bonus Payout Agreement which are made a part of this document.

By signing this document you further agree that the Company may deliver by e-mail all documents relating to this Award (including without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a website maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a website, it will notify you by e-mail.

Recipient **INVITAE CORPORATION**

Name: _____ By: _____
Name: _____
Title: _____

INVITAE CORPORATION

RESTRICTED STOCK UNIT AGREEMENT

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| Payment for Restricted Stock Units | No cash payment is required for the Restricted Stock Units you receive. You are receiving the Restricted Stock Units pursuant to the Transaction Bonus Payout Agreement in consideration for services rendered by you. |
| Vesting | The Restricted Stock Units that you are receiving may vest in one or more installments as shown in the Notice of Restricted Stock Unit Award and the Transaction Bonus Payout Agreement referenced therein. |
| Nature of Restricted Stock Units | Your Restricted Stock Units are mere bookkeeping entries. They represent only the Company's unfunded and unsecured promise to issue Shares on a future date. As a holder of Restricted Stock Units, you have no rights other than the rights of a general creditor of the Company. |
| No Voting Rights or Dividends | Your Restricted Stock Units carry neither voting rights nor rights to dividends. You, or your estate or heirs, have no rights as a stockholder of the Company unless and until your Restricted Stock Units are settled by issuing Shares. No adjustments will be made for dividends or other rights if the applicable record date occurs before your Shares are issued. |
| Restricted Stock Units Nontransferable | You may not sell, transfer, assign, pledge or otherwise dispose of any Restricted Stock Units. For instance, you may not use your Restricted Stock Units as security for a loan. If you attempt to do any of these things, your Restricted Stock Units will immediately become invalid. |
| Settlement of Restricted Stock Units | Each of your vested Restricted Stock Units will be settled as provided in the Transaction Bonus Payout Agreement; provided, however, that if a settlement date does not fall on a permissible trading day for the Shares, settlement shall be deferred to the first permissible trading day for the Shares, but in no event later than December 31 of the calendar year in which the Restricted Stock Units are no longer subject to a substantial risk of forfeiture for purposes of Section 409A (as defined below). |

INVITAE CORPORATION
RESTRICTED STOCK UNIT AGREEMENT

For purposes of this Agreement, “permissible trading day” means a day that satisfies all of the following requirements: (a) the exchange on which the Shares are traded is open for trading on that day; (b) you are permitted to sell Shares on that day without incurring liability under Section 16(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), (c) either (i) you are not in possession of material non-public information that would make it illegal for you to sell Shares on that day under Rule 10b-5 under the Exchange Act or (ii) Rule 10b5-1 under the Exchange Act would apply to the sale; (d) you are permitted to sell Shares on that day under such written insider trading policy as may have been adopted by the Company; and (e) you are not prohibited from selling Shares on that day by a written agreement between you and the Company or a third party.

At the time of settlement, you will receive one Share for each vested Restricted Stock Unit; provided, however, that no fractional Shares will be issued or delivered pursuant to this Agreement, and the Company will determine whether cash will be paid in lieu of any fractional Share or whether such fractional Share and any rights thereto will be canceled, terminated or otherwise eliminated.

In addition, Shares shall not be issued under this Agreement unless the issuance and delivery of such Shares complies with (or is exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations and the regulations of any stock exchange on which the Company’s securities may then be listed, and the Company has obtained the approval or favorable ruling from any governmental agency which the Company determines is necessary or advisable. The Company shall not be liable to you or other persons as to (a) the non-issuance or sale of Shares as to which the Company has not obtained from any regulatory body having jurisdiction the authority deemed by the Company’s counsel to be necessary to the lawful issuance and sale of any Shares under this Agreement, and (b) any tax consequences expected, but not realized, by you or other person due to the receipt, vesting or settlement of this Award.

**Withholding Taxes and
Stock Withholding**

Regardless of any action the Company and/or the subsidiary or affiliate employing you or for which you are providing consulting services to takes with respect to any or all income tax, social insurance, payroll tax, payment on account or other tax-related withholding (“Tax-Related Items”), you acknowledge that the ultimate liability for all Tax-Related Items legally due by you is and remains your responsibility and that the Company and/or its subsidiary or affiliate (1) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of this Award, including the settlement of the Restricted Stock Units, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends; and (2) does not commit to structure the terms of this Award or any aspect of the Restricted Stock Units to reduce or eliminate your liability for Tax-Related Items.

I NVITAE C ORPORATION
R Estricted S TOCK U NIT A GREEMENT

Prior to the settlement of your Restricted Stock Units, you shall pay or make adequate arrangements satisfactory to the Company and/or the subsidiary or affiliate to satisfy all withholding and payment on account obligations of the Company and/or the subsidiary or affiliate. In this regard, if such withholding is legally required, you authorize the Company and/or the subsidiary or affiliate to withhold any applicable Tax-Related Items legally payable by you from your wages or other cash compensation paid to you by the Company and/or the subsidiary or affiliate. With the Company's consent, these arrangements may also include, if permissible under local law, (a) withholding Shares that otherwise would be issued to you when your Restricted Stock Units are settled, provided that the Company only withholds the amount of Shares necessary to satisfy the minimum statutory withholding amount, (b) having the Company withhold taxes from the proceeds of the sale of the Shares, either through a voluntary sale or through a mandatory sale arranged by the Company (on your behalf pursuant to this authorization), or (c) any other arrangement approved by the Company. The fair market value of these Shares, determined as of the effective date when taxes otherwise would have been withheld in cash, will be applied as a credit against the withholding taxes. Finally, you shall pay to the Company or the subsidiary or affiliate any amount of Tax-Related Items that the Company or the subsidiary or affiliate may be required to withhold as a result of your acquisition of Shares that cannot be satisfied by the means previously described. The Company may refuse to deliver the Shares if you fail to comply with your obligations in connection with the Tax-Related Items as described in this section, and your rights to the Shares shall be forfeited if you do not comply with such obligations on or before December 31 of the calendar year in which the applicable settlement date for the Restricted Stock Units occurs.

No Retention Rights

Neither your Award nor this Agreement gives you the right to be employed or retained by the Company or any subsidiary or affiliate of the Company to provide services in any capacity. The Company and its subsidiaries and affiliates reserve the right to terminate your employment or service at any time, with or without cause.

I NVITAE C ORPORATION
R Estricted S TOCK U NIT A GREEMENT

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| Adjustments; Merger and Reorganization | <p>The number of Restricted Stock Units covered by this Award shall be subject to adjustment in the event of a stock split, a stock dividend or a similar change in Company Shares. The restrictions described above will apply to all new, substitute or additional Restricted Stock Units or securities to which you are entitled by reason of this Award.</p> <p>In the event that the Company is a party to a merger or other reorganization, this Award shall, subject to the terms of the Transaction Bonus Payout Agreement, be subject to the agreement of merger or reorganization.</p> |
| Successors and Assigns | <p>Except as otherwise provided in this Agreement, every term of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, legal representatives, successors, transferees and assigns.</p> |
| Notice | <p>Any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon the earliest of personal delivery, receipt or the third full day following mailing with postage and fees prepaid, addressed to the other party hereto at the address last known in the Company's records or at such other address as such party may designate by ten (10) days' advance written notice to the other party hereto.</p> |
| Section 409A of the Code | <p>To the extent this Agreement is subject to and not exempt from Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder ("Section 409A"), this Agreement is intended to comply with Section 409A, and its provisions shall be interpreted in a manner consistent with such intent. You acknowledge and agree that changes may be made to this Agreement to avoid adverse tax consequences to you under Section 409A.</p> |
| Applicable Law and Choice of Venue | <p>This Agreement will be interpreted and enforced under the laws of the State of Delaware (without regard to their choice-of-law provisions). For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this Award or the Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of Santa Clara County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed.</p> |

I NVITAE C ORPORATION
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Miscellaneous

You understand and acknowledge that (i) the grant of your Award does not in any way create any contractual or other right to receive additional grants of awards (or benefits in lieu of awards) at any time or in any amount and (ii) all determinations with respect to any additional grants, including (without limitation) the times when awards will be granted, the number of Shares subject to the awards, and the vesting schedule, will be at the sole discretion of the Company.

The attached Notice, this Agreement and the Transaction Bonus Payout Agreement constitute the entire understanding between you and the Company regarding this Award. Any prior agreements, commitments or negotiations concerning this Award are superseded. This Agreement may be amended only by another written agreement, signed by you and the Company.

Except as otherwise provided in the Transaction Bonus Payout Agreement, the value of this Award shall be an extraordinary item of compensation outside the scope of your employment or consulting contract, if any, and shall not be considered a part of your normal or expected compensation for purposes of calculating severance, resignation, redundancy or end-of-service payments, bonuses, long-service awards, pension or retirement benefits or similar payments.

You hereby authorize the Company or any subsidiary or affiliate to disclose among and between themselves any information regarding your employment or consulting services and the nature and amount of your compensation, as the Company deems necessary or appropriate.

You consent to the collection, use and transfer of your personal data as described in this subsection. You understand and acknowledge that the Company and the Company's other Subsidiaries and affiliates hold certain personal information regarding you, including (without limitation) your name, home address, telephone number, date of birth, social insurance number or other government identification number, salary, nationality, job title, any Shares or directorships held in the Company and details of all awards or any other entitlements to Shares awarded, canceled, exercised, vested, unvested or outstanding in your favor (the "Data"). You further understand and acknowledge that the Company, its Subsidiaries and/or its affiliates will transfer Data among themselves as necessary and that the Company and/or any subsidiary may each further transfer Data to any third party assisting the Company. You understand and acknowledge that the recipients of Data may be

located in the United States or elsewhere, and that the laws of a recipient's country of operation (e.g., the United States) may not have equivalent privacy protections as local laws where you reside or work. You authorize such recipients to receive, possess, use, retain and transfer Data, in electronic or other form, including a transfer to any broker or other third party with whom you elect to deposit Shares of such Data. You may, at any time, view the Data, require any necessary modifications of Data, make inquiries about the treatment of Data or withdraw the consents set forth in this subsection by contacting the Human Resources Department of the Company in writing.

**BY SIGNING THE ATTACHED NOTICE, YOU AGREE TO ALL OF THE TERMS
AND CONDITIONS DESCRIBED ABOVE.**

I NVITAE C ORPORATION
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EXHIBIT B-2

TRANSACTION BONUS PAYOUT AGREEMENT
[Outside Directors]

This TRANSACTION BONUS PAYOUT AGREEMENT (this “*Agreement*”) is entered into as of July 31, 2017 by and among Invitae Corporation, a Delaware corporation (“*Invitae*”), CombiMatrix Corporation, a Delaware corporation (“*CombiMatrix*”), and [●] (the “*Recipient*”). For purposes of this Agreement, the “*Invitae Group*” refers to Invitae, CombiMatrix and their respective affiliates.

WHEREAS, on December 2, 2015, CombiMatrix adopted the CombiMatrix Transaction Bonus Plan (the “*Transaction Bonus Plan*”) pursuant to which certain employees of CombiMatrix may receive transaction bonuses on a Qualifying Transaction (as defined in the Transaction Bonus Plan); and

WHEREAS, the merger (the “*Merger*”) of Coronado Merger Sub, Inc., a Delaware corporation (“*Merger Sub*”), with and into CombiMatrix, with CombiMatrix continuing as the surviving corporation, pursuant to that Agreement and Plan of Merger, dated as of the date hereof (the “*Merger Agreement*”), by and among Invitae, CombiMatrix and Merger Sub, shall constitute a Qualifying Transaction under the Transaction Bonus Plan; and

WHEREAS, Invitae and CombiMatrix desire to set forth herein the terms and conditions pursuant to which the Recipient’s right to be paid a transaction bonus as defined in the Transaction Bonus Plan (the “*Transaction Bonus*”) shall be settled in connection with the Merger.

NOW, THEREFORE, in consideration of the covenants and premises described in this Agreement and other valuable consideration, the sufficiency of which the parties hereby acknowledge, the parties, intending to be legally bound, agree as follows:

1. Effective Date. This Agreement is effective as of the date on which the closing of the Merger occurs (such date, the “*Closing Date*”). In the event that the Merger Agreement is terminated in accordance with its terms, this Agreement shall automatically be deemed null and void and of no further force and effect.
2. Transaction Bonus. Subject to the terms and conditions of this Agreement and the Transaction Bonus Plan, Invitae shall grant the Recipient unrestricted shares of Invitae Common Stock (as defined in the Merger Agreement) on the Closing Date (or as soon as practicable thereafter). The number of shares of Invitae Common Stock shall be equal to the dollar amount of the transaction bonus awarded to the Recipient under the Transaction Bonus Plan *divided by* the Invitae Trailing Average Share Value (as defined in the Merger Agreement). The grant of the unrestricted shares of Invitae Common Stock in accordance with this Agreement shall constitute payment of the Transaction Bonus in full settlement of all of the Recipient’s rights under the Transaction Bonus Plan. To the extent such shares of Invitae Common Stock are not covered by a registration statement that is effective before the Closing Date under the Securities Act of 1933, as amended (the “*Act*”), Invitae will use commercially reasonable efforts to register the shares for resale as soon as reasonably practicable on a registration statement on Form S-3 or another appropriate form in accordance with the Act.

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3. Conditions to Receipt of Transaction Bonus . The Recipient's right to receive the Transaction Bonus is conditioned on the Recipient's execution of this Agreement and the Recipient's continued service with CombiMatrix until immediately prior to the Closing Date.
 4. [RESERVED]
 5. Miscellaneous .
 - (a) *Entire Agreement; Amendment* . This Agreement and the Transaction Bonus Plan embody the entire agreement and understanding of the parties in respect of its subject matter and supersede all prior agreements and understandings between the parties with respect to such subject matter (whether or not written). In the event of a conflict between the provisions of this Agreement and the Transaction Bonus Plan, the provisions of this Agreement shall control and the Transaction Bonus Plan shall be deemed amended with the consent of the Recipient accordingly. This Agreement may be amended or modified only by written agreement signed by the parties.
 - (b) *No Contract for Continuing Services* . This Agreement shall not be construed as creating any contract for continued services between the Invitae Group and the Recipient and nothing herein contained shall give the Recipient the right to be retained as an employee, consultant or director of the Invitae Group.
 - (c) *No Transfers* . The Recipient's rights in the Transaction Bonus may not be assigned or transferred other than to the Recipient's heirs by reason of the Recipient's death.
 - (d) *Governing Law* . This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to any principles of conflict of laws of such state that would require the application of the laws of any other jurisdiction.
 - (e) *Enforceability* . If any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
 - (f) *Waiver* . No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

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- (g) *Successors; Assignability* . This Agreement shall inure to the benefit of and be binding upon the parties, their respective successors, executors, administrators, heirs and permitted assigns; nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the parties and their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The Recipient may not assign, delegate or otherwise transfer any of the Recipient's rights or obligations under this Agreement. Invitae or CombiMatrix may transfer or assign, in whole or from time to time in part, to one or more of its affiliates, or to any successor to one or more of its businesses, its rights or obligations under this Agreement without the prior written consent signed by the Recipient.
- (h) *Counterparts* . This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- (i) *Section 409A* . This Agreement is intended to comply with Section 409A of the Code and the regulations promulgated thereunder (“ **Section 409A** ”) or an exemption therefrom and shall be interpreted, construed and administered in accordance with Section 409A or such exemption. To the extent that any amounts payable hereunder are determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A, such amounts shall be subject to such additional rules and requirements in order to comply with Section 409A and the settlement of any such amounts may not be accelerated or delayed except to the extent permitted by Section 409A. The Invitae Group makes no representation or warranty and shall have no liability to the Recipient or any other person if any payments under any provisions of this Agreement are determined to constitute deferred compensation under Section 409A that are subject to the 20% tax under Section 409A.
- (j) *Cooperation* . The parties shall cooperate reasonably with each other, at the request of any party, to modify the arrangements contemplated by this Agreement so long as any such modified arrangements do not leave any party in a worse position (in such party's sole discretion).

[*Signature page follows*]

IN WITNESS WHEREOF , the parties hereto have executed this Agreement on the date first written above.

COMBIMATRIX CORPORATION

By _____
Name:
Title:

INVITAE CORPORATION

By _____
Name:
Title:

RECIPIENT

Name:

[*Signature Page to Director Transaction Bonus Payout Agreement*]

AGREEMENT AND PLAN OF MERGER

among

INVITAE CORPORATION,

BUENO MERGER SUB, INC.,

GOOD START GENETICS, INC.,

THE NOTEHOLDERS

THE MANAGEMENT CARVEOUT PLAN PARTICIPANTS

and

ORBIMED PRIVATE INVESTMENTS III, LP,

as Holders' Representative

July 31, 2017

TABLE OF CONTENTS

| | |
|--|----|
| ARTICLE I: DEFINITIONS | 2 |
| Section 1.1 Defined Terms | 2 |
| ARTICLE II: THE MERGER AND EFFECT OF THE MERGER | 19 |
| Section 2.1 The Merger | 19 |
| Section 2.2 Closing | 19 |
| Section 2.3 Effective Time | 19 |
| Section 2.4 Effects of the Merger | 19 |
| Section 2.5 Charter Documents of Surviving Corporation | 19 |
| Section 2.6 Management of the Surviving Corporation | 20 |
| Section 2.7 Effect of the Merger on Capital Stock; Company Options; Company Warrants; and Company Promissory Notes | 20 |
| Section 2.8 Delivery of Calculations | 22 |
| Section 2.9 Payments At Closing | 22 |
| Section 2.10 Issuances of Shares After Closing | 23 |
| Section 2.11 Non-Conversion | 23 |
| Section 2.12 Exchange Agent; Exchange of Certificates | 24 |
| Section 2.13 Adjustments | 26 |
| Section 2.14 Post-Closing Adjustment Amount | 26 |
| Section 2.15 Hold-Back Amount and Payment | 28 |
| ARTICLE III: REPRESENTATIONS AND WARRANTIES OF THE COMPANY | 28 |
| Section 3.1 Organizational Matters | 28 |
| Section 3.2 Authority; Noncontravention; Voting Requirements | 29 |
| Section 3.3 Capitalization | 30 |
| Section 3.4 No Consents or Approvals | 32 |
| Section 3.5 Financial Matters | 33 |
| Section 3.6 Absence of Certain Changes or Events | 35 |
| Section 3.7 Legal Proceedings | 35 |
| Section 3.8 Compliance with Laws; Permits | 35 |
| Section 3.9 Taxes | 37 |
| Section 3.10 Employee Benefits and Labor Matters | 40 |
| Section 3.11 Environmental Matters | 45 |
| Section 3.12 Contracts | 45 |
| Section 3.13 Assets: Title, Sufficiency, Condition | 49 |
| Section 3.14 Real Property | 49 |
| Section 3.15 Intellectual Property; Technology; Privacy and Security; Information Systems; Disaster Recovery | 51 |
| Section 3.16 Insurance | 57 |
| Section 3.17 Related Party/Affiliate Transactions | 57 |
| Section 3.18 Customers, Payors and Suppliers | 57 |
| Section 3.19 Product Warranties | 57 |
| Section 3.20 Disclaimer of Warranties | 58 |
| Section 3.21 Certain Business Practices | 58 |
| Section 3.22 Brokers and Other Advisors | 58 |

| | |
|---|----|
| ARTICLE IV: REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB | 59 |
| Section 4.1 Organization, Standing and Corporate Power | 59 |
| Section 4.2 Authority; Noncontravention | 59 |
| Section 4.3 Governmental Approvals | 60 |
| Section 4.4 Ownership and Operations of Merger Sub | 60 |
| ARTICLE V: ADDITIONAL COVENANTS AND AGREEMENTS | 60 |
| Section 5.1 Conduct of Business | 60 |
| Section 5.2 Stockholder Approval; Preferred Stock Conversion | 63 |
| Section 5.3 Commercially Reasonable Efforts | 64 |
| Section 5.4 Public Announcements | 65 |
| Section 5.5 Access to Information | 65 |
| Section 5.6 Confidentiality | 65 |
| Section 5.7 Notification of Certain Matters | 66 |
| Section 5.8 Tax Matters | 66 |
| Section 5.9 Employment/Consulting Agreements | 70 |
| Section 5.10 Officers and Directors Insurance | 70 |
| Section 5.11 Employee Matters | 70 |
| Section 5.12 No Negotiations, Etc. | 71 |
| Section 5.13 Termination of the Company Option Plan | 71 |
| Section 5.14 MIPS | 71 |
| ARTICLE VI: CONDITIONS TO CLOSING | 72 |
| Section 6.1 Conditions to Obligations of Parent and Merger Sub | 72 |
| Section 6.2 Conditions to Obligation of the Company | 76 |
| ARTICLE VII: TERMINATION | 76 |
| Section 7.1 Termination | 76 |
| Section 7.2 Effect of Termination | 77 |
| ARTICLE VIII: SURVIVAL AND INDEMNIFICATION | 78 |
| Section 8.1 Survival | 78 |
| Section 8.2 Indemnification | 78 |
| Section 8.3 Offset Right | 82 |
| Section 8.4 Claims for Indemnification; Resolution of Conflicts | 83 |
| Section 8.5 Holder's Representative | 88 |
| ARTICLE IX: GENERAL PROVISIONS | 89 |
| Section 9.1 Interpretation | 89 |
| Section 9.2 Notices | 90 |
| Section 9.3 Assignment and Succession | 92 |
| Section 9.4 Amendment or Supplement | 92 |

| | | |
|---------------------|--|----|
| Section 9.5 | Waivers | 92 |
| Section 9.6 | Entire Agreement | 93 |
| Section 9.7 | No Third-Party Beneficiaries | 93 |
| Section 9.8 | Remedies Cumulative | 93 |
| Section 9.9 | Specific Performance | 93 |
| Section 9.10 | Severability | 93 |
| Section 9.11 | Costs and Expenses | 94 |
| Section 9.12 | Time of Essence | 94 |
| Section 9.13 | Counterparts | 94 |
| Section 9.14 | Governing Law | 94 |
| Section 9.15 | Exclusive Jurisdiction; Venue; Service of Process | 94 |
| Section 9.16 | JURY TRIAL | 94 |
| Section 9.17 | Representation of the Holders and Affiliates | 95 |

EXHIBITS

| |
|---|
| Exhibit A – Form Note Termination Agreement |
| Exhibit B – Form Management Carveout Plan Participant Agreement |
| Exhibit C – Accounting Methodology |
| Exhibit D – Form Certificate of Merger |
| Exhibit E – Form Exchange Agent Agreement |
| Exhibit F – Form Letter of Transmittal |
| Exhibit G – Form of Support Agreement |
| Exhibits H-1 and H-2 – Employment/Consulting Agreements |

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “Agreement”), is dated as of July 31, 2017 (the “Signing Date”), by and among INVITAE CORPORATION, a Delaware corporation (“Parent”), BUENO MERGER SUB, INC., a Delaware corporation (“Merger Sub”), GOOD START GENETICS, INC., a Delaware corporation (the “Company”), the Noteholders, the Management Carveout Plan Participants and OrbiMed Private Investments III, LP, as representative of the Holders and Management Carveout Plan Participants (as more thoroughly defined in Section 8.5, “Holder’s Representative”). Each of Parent, Merger Sub, the Company, the Noteholders, the Management Carveout Plan Participants and Holders’ Representative may be individually referred to herein as a “Party” and collectively referred to herein as the “Parties.” Capitalized terms used herein have the meanings ascribed thereto in Article 1 or elsewhere in this Agreement as identified in Article 1.

RECITALS

WHEREAS, the Company, Parent and Merger Sub intend to effect a merger of Merger Sub with and into the Company (the “Merger”) in accordance with this Agreement and the General Corporation Law of the State of Delaware (the “DGCL”), whereupon consummation of the Merger, Merger Sub shall cease to exist and the Company shall become a Subsidiary of Parent;

WHEREAS, the board of directors of the Company has approved, adopted and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, and recommended the adoption of this Agreement and the transactions contemplated by this Agreement to its stockholders, in accordance with the DGCL and upon the terms and subject to the conditions set forth herein;

WHEREAS, the respective board of directors of Parent and Merger Sub have each approved, adopted and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, in accordance with the DGCL and upon the terms and subject to the conditions set forth herein;

WHEREAS, following the execution of this Agreement, the Company shall seek to obtain, in accordance with Section 228(a) of the DGCL, consent of its shareholders approving this Agreement, the Merger and the transactions contemplated hereby (including the Preferred Stock Conversion); provided, however, that concurrently with the execution of this Agreement, Support Agreements in the form of Exhibit G (the “Support Agreements”) are being executed and delivered to Parent by stockholders owning (i) at least 95% of the Company Common Stock (after giving effect to the Preferred Stock Conversion), (ii) all of the outstanding Series A Preferred Stock before the Preferred Stock Conversion and (iii) all of the outstanding Series B Preferred Stock before the Preferred Stock Conversion;

WHEREAS, concurrently with the execution and delivery of this Agreement, each of the Noteholders is executing and delivering a note termination agreement in the form of Exhibit A attached hereto (each a “Note Termination Agreement” and collectively the “Note Termination Agreements”), pursuant to which, (a) effective as of the Closing, the Company Promissory Notes

will be terminated, null and void in consideration of a portion of the Closing Date Merger Consideration (subject to certain adjustments as well as holdbacks and offsets as determined pursuant to this Agreement), (b) each Noteholder shall release Parent and the Company from any existing claims or obligations, including those arising from the Company Promissory Notes, the Merger or any of the other transactions contemplated hereby, and (c) each such Noteholder shall appoint the Holders' Representative as provided in Section 8.5, and become subject to the indemnification and other obligations described therein; and

WHEREAS, concurrently with the execution and delivery of this Agreement, each of the Management Carveout Plan Participants is executing and delivering a management carveout plan participant agreement in the form of Exhibit B attached hereto (each a "Management Carveout Plan Participant" and collectively the "Management Carveout Plan Participant Agreements"), pursuant to which, (a) each Management Carveout Plan Participant shall release Parent and the Company from any existing claims or obligations, including those arising from the Merger or any of the other transactions contemplated hereby, and (b) each such Management Carveout Plan Participant shall appoint the Holders' Representative as provided in Section 8.5, and become subject to the indemnification and other obligations described therein.

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

ARTICLE I: DEFINITIONS

Section 1.1 Defined Terms .

The following terms shall have the following meanings in this Agreement:

"Accounting Methodology" means the accounting methods, practices and procedures used to prepare the Audited Financial Statements which are consistent with the sample calculation and methodology set forth in Exhibit C.

"Action" means any claim, controversy, suit, action or cause of action, litigation, arbitration, investigation, opposition, interference, audit, hearing, demand, assessment, complaint, citation, proceeding, order or other legal proceeding (whether sounding in contract or tort or otherwise, whether civil, criminal, administrative or otherwise and whether brought at law or in equity or under arbitration or administrative regulation) and any written notice of violation, notice of potential responsibility or any notice alleging liability.

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

“Aggregate Per Share Consideration” means the product of (i) the Per Share Amount and (ii) the number of shares of Company Capital Stock outstanding immediately prior to the Effective Time (excluding shares to be canceled in accordance with Section 2.7.2 and Dissenting Shares, and after giving effect to the Preferred Stock Conversion).

“Anti-Kickback Statute” means the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and all regulations promulgated thereunder.

“Business Day” means any day other than a Saturday, Sunday or any other day on which banking institutions in Boston, Massachusetts are authorized or required by Law or order to remain closed.

“Cardholder Data” means any combination of credit card primary account number, cardholder name, expiration date and card validation value (or code).

“CERCLA” is defined within the definition of “Environmental Laws” below.

“Certificate” means a certificate representing shares of the Company Capital Stock.

“Change of Control Payment” means (a) any bonus, severance or other payment that is created, accelerated, accrues or becomes payable by the Company to any present or former director, stockholder, Employee or Consultant, including pursuant to an employment agreement, Plan or any other Contract (including, for the avoidance of doubt, any amounts payable, or that may become payable, under the Severance Plan) and (b) without duplication of any other amounts included within the definition of Company Transaction and Bonus Expenses, any other payment, expense or fee that accrues or becomes payable by the Company to any Governmental Authority or other Person under any Law or Contract, including in connection with the making of any filings, the giving of any notices or the obtaining of any consents, authorizations or approvals, in each case of each of (a) and (b) as a result of or in connection with the execution and delivery of the Agreement or any other Transaction Agreement, the consummation of the Transactions (including the Merger), or, with respect to amounts payable or that may become payable under the Severance Plan, upon termination of the applicable Employee. Notwithstanding the foregoing, Change of Control Payment specifically excludes (i) the Management Carveout Plan Consideration and (ii) amounts that may become payable under the Severance Plan to those non-executive Employees identified on Schedule 1.

“Charter Documents” means, with respect to any entity, the articles of incorporation and bylaws or similar organizational documents of such entity.

“Closing Cash” means the fair market value of all cash and cash equivalents held by the Company as of the Closing (before taking into account the consummation of the Merger), determined in accordance with the Accounting Methodology, excluding, to the extent applicable, (i) outstanding (uncleared) checks, drafts, wire transfers or deposits in transit, and other debits and credits in-process, (ii) restricted balances, (iii) amounts held in escrow, (iv) amounts held in banks outside of the United States in accounts that cannot be readily expatriated due to foreign exchange controls or other applicable Laws, (v) the proceeds of any casualty loss with respect to any asset held or owned by the Company (to the extent that any such asset has not been repaired or replaced or the liability for the repair or replacement of such asset has not been paid or accrued as a current liability), and (vi) cash received with respect to unperformed work or installations and reflected as deferred revenues on the Closing Balance Sheet.

“Closing Date Merger Consideration” means an amount equal to the Purchase Price *minus* (a) the estimated Company Debt (excluding, for this purpose, the Company Promissory Notes and the Management Carveout Plan but including, for the avoidance of doubt, the Senior Debt), *minus* (b) the Aggregate Per Share Consideration, *minus* (c) the estimated Company Transaction and Bonus Expenses, *minus* (d) the amount, if any, by which the Net Working Capital Threshold exceeds the estimated Closing Net Working Capital, in each case, as determined in accordance with the Accounting Methodology and as of immediately prior to the Closing.

“Closing Net Working Capital” means, with respect to the Company, as of the Closing, an amount equal to (i) the current assets of the Company (including Closing Cash) reduced by (ii) the liabilities of the Company other than Company Debt, in each case as determined in accordance with the Accounting Methodology.

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

“Collection and Use” (and its variants) means the collection, use interception, storage, receipt, purchase, sale, maintenance, transmission, transfer, disclosure, processing and/or use of Personal Data.

“Company Capital Stock” means the outstanding shares of the Company Common Stock and the outstanding shares of Company Preferred Stock.

“Company Common Stock” means the common stock of the Company, par value \$0.0001 per share.

“Company Promissory Notes” means the Company’s convertible promissory notes and promissory notes, in the aggregate principal amount of \$19,325,000, issued pursuant to those certain note purchase agreements dated as of April 4, 2016, July 29, 2016, December 30, 2016 and June 9, 2017.

“Company Debt” means, as at any time with respect to the Company, without duplication, all Liabilities, including all obligations with respect to principal, accrued and unpaid interest, penalties, premiums and any other fees, expenses and breakage costs on and other payment obligations arising under any (a) indebtedness for borrowed money (including amounts outstanding under overdraft facilities), (b) indebtedness issued in exchange for or in substitution for borrowed money, (c) obligations for the deferred purchase price of property, goods or services other than trade payables arising in the Ordinary Course of Business (but including any deferred purchase price Liabilities, earnouts, contingency payments, seller notes, promissory notes or similar Liabilities, in each case, related to past acquisitions by the Company and for the avoidance of doubt, whether or not contingent), (d) obligations evidenced by any note, bond, debenture, guarantee or other debt security or similar instrument or Contract, (e) all liabilities under capitalized leases (f) all obligations, contingent or otherwise, in respect of letters of credit

and banker's acceptance or similar credit transactions, (g) obligations under Contracts relating to interest rate protection or other hedging arrangements, to the extent payable if such Contact is terminated at Closing and (h) guarantees of the types of obligations described in sub clauses (a) through (g) above. Without limiting the foregoing, Company Debt specifically includes the Company Promissory Notes, the Senior Debt and the Management Carveout Plan.

“Company Intellectual Property Rights” means all Intellectual Property Rights owned by the Company or used by the Company in connection with the business of the Company as currently conducted or as proposed to be conducted, including all Intellectual Property Rights in and to Company Technology.

“Company Material Adverse Effect” means, with respect to the Company, any fact, condition, event, change, circumstance or effect that, individually or in the aggregate with all other facts, conditions, changes, circumstances and effects with respect to which such defined term is used in this Agreement, is, or could reasonably be expected to become, materially adverse to (a) the business, assets, operations, results of operations or condition (financial or otherwise) of the Company, or (b) the Company's ability to, in a timely manner, perform its obligations under the Transaction Agreements to which it is a party, or to consummate the Transactions (including the Merger) under such Transaction Agreements; *provided, however*, that any determination of whether there has been a Material Adverse Effect pursuant to clause (b) above shall not include any effect, change, event, occurrence or state of facts: (i) that generally affects the industry in which the Company operates so long as the Company is not disproportionately affected thereby relative to other participants in such industry, (ii) that results from general economic or political conditions in any country where the Company's business is conducted so long as the Company is not disproportionately affected relative to the other companies therein, (iii) arising out of or attributable to any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates, (iv) arising out of or attributable to any acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof, (v) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof, (vi) any natural or man-made disaster or acts of God, (vii) any failure by the Company to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded), or (viii) that results from the taking or announcement of any action specifically contemplated or required to be taken by this Agreement.

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

“Company Option Plan” means the Company's Amended and Restated 2008 Stock Incentive Plan.

“Company Plans” means (a) “employee benefit plans” (as defined in Section 3(3) of ERISA, as amended), (b) individual employment, consulting, change in control, severance or other agreements or arrangements and (c) other benefit plans, policies, agreements or arrangements, including bonus or other incentive compensation, stock purchase, equity or equity-based compensation, deferred compensation, profit sharing, change in control, severance, pension, retirement, welfare, sick leave, vacation, loans, salary continuation, health, dental, disability, flexible spending account, service award, fringe benefit, life insurance and educational assistance plan, policies, agreements or arrangements, whether written or oral, under which any Employee, Consultant or director of the Company participates and which is maintained, contributed to or participated in by the Company, or with respect to which the Company has or may have any obligation or liability, contingent or otherwise.

“Company Preferred Stock” means the Series A Preferred Stock and the Series B Preferred Stock.

“Company Technology” means any and all Technology that is owned by the Company or used in connection with, or necessary to the conduct of, the business of the Company as currently conducted or as proposed to be conducted, including Proprietary Software.

“Company Transaction and Bonus Expenses” means an amount equal to (i) the aggregate fees and expenses payable or reimbursable by the Company to third parties in connection with negotiation, entering into and consummation of this Agreement and the Transactions including the Merger, including the fees and expenses of investment bankers, finders, consultants, attorneys, accountants and others advisors engaged by the Company in connection with the Merger and (ii) all Change of Control Payments. For the avoidance of doubt, Company Transaction and Bonus Expenses specifically excludes the Management Carveout Plan Consideration.

“Company Warrants” means all warrants to acquire shares of the Company Capital Stock, including the warrants issued to the Warrantholder to purchase up to 132,770 shares of Series A Preferred Stock and up to 233,333 shares of Series B Preferred Stock, whether or not vested or exercisable.

“Company Voting Agreement” means that certain Amended and Restated Voting Agreement, dated as of May 16, 2012, by and among the Company, the holders of the Company Preferred Stock and certain holders of the Company Common Stock identified therein, as amended by the First Amended and Restated Voting Agreement, dated as of May 29, 2016.

“Confidentiality Agreement” means the Mutual Nondisclosure Agreement, effective as of June 17, 2016, between Parent and the Company as it may be amended from time to time.

“Contract” means any contract, loan or credit agreement, debenture, note, guaranty, bond, mortgage, indenture, deed of trust, license, lease or other agreement, arrangement or instrument (in each case, as applicable, whether written or oral) that is legally binding.

“Dissenting Shares” means shares of Company Capital Stock held by a holder who has properly demanded and not effectively withdrawn or lost such holder’s appraisal, dissenters’ or similar rights for such shares under the DGCL.

“DOL” means the United States Department of Labor.

“DR Plans” means the Company’s disaster recovery and business continuity plans.

“Effective Date” means the date on which the Effective Time occurs.

“Environmental Laws” means all Laws relating in any way to the environment, preservation or reclamation of natural resources, the presence, management or Release of, or exposure to, Hazardous Materials, or to human health and safety, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) (“CERCLA”), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), each of their state and local counterparts or equivalents, each of their foreign and international equivalents and any transfer of ownership notification or approval statute, as each has been amended and the regulations promulgated pursuant thereto.

“Environmental Liabilities” means, with respect to any Person, all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, liens, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any Action, claim or demand by any other Person or in response to any violation of Environmental Law, whether known or unknown, accrued or contingent, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or administrative regulation, to the extent based upon, related to, or arising under or pursuant to any Environmental Law, environmental Permit, order or agreement with any Governmental Authority or other Person, which relates to any environmental, health or safety condition, violation of Environmental Law or Release or threatened Release of Hazardous Materials.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“European Economic Area” means the member countries of the European Union, Norway, Iceland and Lichtenstein.

“False Claims Act” means the Federal False Claims Act, 31 U.S.C. § 3729 et seq., and all regulations promulgated thereunder.

“FDA” means the United States Food and Drug Administration.

“Final Merger Consideration” means an amount equal to the Purchase Price *minus* (a) the Company Debt (excluding, for this purpose, the Company Promissory Notes and the Management Carveout Plan but including, for the avoidance of doubt, the Senior Debt), *minus* (b) the Aggregate Per Share Consideration, *minus* (c) the Company Transaction and Bonus Expenses, *minus* (d) the amount, if any, by which the Net Working Capital Threshold exceeds the Closing Net Working Capital, in each case, as determined in accordance with the Accounting Methodology and as of immediately prior to the Closing.

“FTC” means the United States Federal Trade Commission.

“Fully Diluted Shares of Company Capital Stock” means the sum, without duplication, of the aggregate number of shares of Company Capital Stock (on an as converted to Company Common Stock basis, including giving effect to the Preferred Stock Conversion) that are issued and outstanding immediately prior to the Effective Time (other than shares to be cancelled in accordance with Section 2.7.2).

“GAAP” means the generally accepted accounting principles in the United States.

“Governmental Authority” means any (a) nation, region, state, county, city, town, village, district or other jurisdiction, (b) federal, state, local, municipal, foreign or other government, (c) department, agency or instrumentality of a foreign or other government, including any state-owned or state-controlled instrumentality of a foreign or other government, (d) governmental or quasi-governmental entity of any nature (including any governmental agency, branch, department or other entity and any court or other tribunal), (e) international or multinational organization formed by states or governments, (f) organization that is designated by executive order pursuant to Section 1 of the United States International Organizations Immunities Act (22 U.S.C. 288 of 1945), as amended and the rules and regulations promulgated thereunder or (g) other body entitled to exercise any administrative, executive, judicial, legislative, police or regulatory authority.

“Hazardous Materials” means any material, substance or waste that is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as “hazardous”, “toxic”, a “pollutant”, a “contaminant”, “radioactive” or words of similar meaning or effect, including petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, mold, urea formaldehyde insulation, chlorofluorocarbons and all other ozone-depleting substances.

“Health Care Laws” means any Laws relating to health care regulatory and reimbursement matters, including, without limitation, (i) the Stark Law, (ii) the Anti-Kickback Statute, (iii) the False Claims Act, (iv) the Occupational Safety and Health Act, and all regulations, agency guidance or similar legal requirement promulgated thereunder that apply to Seller or its business, (v) the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321 et seq., and all regulations promulgated thereunder, (vi) the Public Health Service Act, 42 U.S.C. § 201 et seq., and all regulations, agency guidance or similar legal requirement promulgated thereunder, (vii) the Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a , and all regulations, agency guidance or similar legal requirements promulgated thereunder, (viii) applicable Laws of

the United States Drug Enforcement Administration, (ix) the Medicare Act, 42 U.S.C. § 1395 et seq., and all regulations, agency guidance, or similar legal requirement promulgated thereunder (x) state self-referral, anti-kickback, fee-splitting and patient brokering Laws, (xi) Information Privacy and Security Laws, including those related to genetic testing and the privacy of genetic testing results, and (xii) state Laws governing the licensure and operation of clinical laboratories and billing for clinical laboratory services.

“HIPAA” means, collectively, Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”), implementing regulations promulgated thereunder and related guidance issued from time to time.

“Hold-Back Amount” means \$4,000,000.

“Holder” means any Stockholder and Noteholder.

“Holder Indemnified Persons” means the Holders, the Management Carveout Plan Participants, and their respective Affiliates and each of their respective equity holders, directors, officers, employees, agents, successors and assigns.

“Holders’ Representative Expenses” means the loss, liability or expense of any nature incurred by Holders’ Representative arising out of or in connection with the administration of its duties as Holders’ Representative, including reasonable legal fees and other costs and expenses of defending or preparing to defend against any claim or liability in the premises, unless such loss, liability or expense is caused by such Holders’ Representative’s willful misconduct or gross negligence.

“Indemnified Person” means a Parent Indemnified Person or a Holder Indemnified Person, as applicable.

“Indemnifying Party” means Parent, or the Noteholders and the Management Carveout Plan Participants (including, where applicable, the Holders’ Representative on behalf of the Noteholders and the Management Carveout Plan Participants), as applicable.

“Information Privacy and Security Laws” means all applicable Laws concerning the privacy and/or security of Personal Data (including any Laws of jurisdictions where the Personal Data was collected), and all regulations promulgated thereunder, including, where applicable, HIPAA, state data privacy and breach notification Laws, state social security number protection Laws, any applicable Laws concerning requirements for website and mobile application privacy policies and practices, data or web scraping, call or electronic monitoring or recording or any outbound communications (including, outbound calling and text messaging, telemarketing, and e-mail marketing), the European Union Directive 95/46/EC, the Federal Trade Commission Act, the Gramm Leach Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the CAN-SPAM Act, the Telephone Consumer Protection Act, Children’s Online Privacy Protection Act, and state consumer protection Laws.

“Information Statement” shall mean an information statement prepared by the Company and relating to the vote by the Stockholders on the adoption of this Agreement and the transactions contemplated by this Agreement.

“Information System” means software, hardware, computer and telecommunications equipment and other information technology and related services.

“Initial Hold-Back Shares” means the number of shares of Parent’s Common Stock equal to the Hold-Back Amount *divided by* the Trailing Average Share Price, calculated as of the Signing Date.

“Intellectual Property Rights” means the entire right, title and interest in and to all proprietary rights of every kind and nature however denominated, throughout the world, including (a) patents, industrial designs, copyrights, mask work rights, trade secrets, database rights and all other proprietary rights in Technology; (b) trademarks, trade names, service marks, service names, brands, trade dress, logos and other indicia of origin and the goodwill and activities associated therewith; (c) domain names, rights of privacy and publicity and moral rights; (d) any and all registrations, applications, recordings, licenses, common-law rights and contractual rights relating to any of the foregoing; and (e) all Actions and rights to sue at law or in equity for any past or future infringement or other impairment of any of the foregoing, including the right to receive all proceeds and damages therefrom and all rights to obtain renewals, continuations, divisions, or other extensions of legal protections pertaining thereto.

“IRS” means the United States Internal Revenue Service.

“Knowledge” means, with respect to the Company, the actual knowledge of Jeffrey Luber, Marc Jones, Gregory Porreca, Jim Frontero, Nicole Faulkner and Mark Umbarger, and, in each case, the knowledge such individuals would reasonably be expected to have after due inquiry with respect to the subject matter so qualified with Knowledge.

“Law” means any United States federal, state or local or any foreign law, statute, standard, ordinance, code, rule, regulation, resolution or promulgation, agency guidance or similar legal requirement or any Order or any Permit granted under any of the foregoing or any similar provision having the force or effect of law and includes, without limitation, Health Care Laws.

“Liability” means, with respect to any Person, any liability or obligation of such Person whether known or unknown, whether asserted or not asserted, whether determined, determinable or otherwise, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether directly incurred or consequential, whether due or to become due and whether or not required under GAAP to be accrued on the financial statements of such Person.

“Lien” means any charge, encumbrance, claim, community or other marital property interest, equitable ownership interest, collateral assignment, lien (statutory or otherwise), license, option, pledge, security interest, mortgage, deed of trust, attachment, right of way, easement, restriction, encroachment, encumbrance, servitude, right of first offer or first refusal, buy/sell agreement and any other restriction or covenant with respect to, or condition governing the use, construction, voting (in the case of any equity interest), transfer, receipt of income or exercise of any other attribute of ownership of any kind or nature whatsoever affecting or attached to any asset.

“Loss” means, with respect to any Person, any Action, cost, damage, expense, Liability, loss, injury, deficiency, Tax, settlement, including interest, penalties, fees, fines, reasonable legal, accounting and other professional fees and reasonable expenses incurred in the investigation, collection, prosecution, determination and defense of such Losses (including, in each case, in connection with the enforcement of any claim for indemnification hereunder), that is incurred or suffered by such Person.

“Management Carveout Plan” means the Company’s Management Carveout Plan adopted by the Company’s Board of Directors on July 27, 2017.

“Management Carveout Plan Consideration” means, with respect to each Management Carveout Plan Participant, any amount payable to such Management Carveout Plan Participant resulting from the consummation of the transactions contemplated by this Agreement pursuant to the Management Carveout Plan.

“Management Carveout Plan Participant” means each Person with the right to receive any Management Carveout Plan Consideration pursuant to the Management Carveout Plan.

“Net Working Capital Threshold” means \$0.00.

“Nonqualified Deferred Compensation Plan” has the meaning given such term in Section 409A(d)(1) of the Code.

“Noteholder” means any holder of the Company Promissory Notes.

“Optionholder” means a holder of one or more Company Options.

“Order” means any Law, order, injunction (whether temporary, preliminary or permanent), judgment, decree, assessment, award or ruling enacted, promulgated, issued, entered, amended or enforced by any Governmental Authority.

“Ordinary Course of Business” means the ordinary course of business of the Company consistent with past practice in nature and amount.

“Parent Indemnified Persons” means the Surviving Corporation, Parent, Merger Sub and their Affiliates and each of their respective equity holders, directors, officers, employees, agents, successors and assigns.

“Parent’s Common Stock” means shares of Parent’s common stock, par value \$0.0001 per share, or any other shares of capital stock into which such common stock may be reclassified, converted or exchanged.

“Payment Programs” means Medicare, TRICARE, Medicaid, Blue Cross/Blue Shield plans, and all other health maintenance organizations, preferred provider organizations, health benefit plans, health insurance plans, and other third party reimbursement and payment programs.

“PCI-DSS” means the Payment Card Industry Data Security Standards, as amended from time to time.

“Permit” means any permit, license, franchise, certificate, accreditation approval, registration, notification or authorization from any Governmental Authority, or required by any Governmental Authority to be obtained, maintained or filed.

“Permitted Liens” means: (i) statutory liens with respect to the payment of Taxes, in all cases which are not yet due or payable or that are being contested in good faith by appropriate actions and for which appropriate reserves with respect thereto have been specifically established on the books and records of the Company to the extent required in accordance with GAAP; and (ii) statutory liens of landlords, suppliers, mechanics, carriers, materialmen, warehousemen, service providers or workmen and other similar Liens imposed by Law created in the Ordinary Course of Business the existence of which could not constitute a default or breach under any of the Company’s Contracts for amounts that are not yet delinquent and are not, individually or in the aggregate significant (iii) building, zoning, entitlement and other land use regulations imposed by any Governmental Authority with jurisdiction over the Owned Real Property which are not violated by the current use or occupancy of such Real Property, and (iv) easements, conditions, covenants and restrictions that are of record with respect to the Real Property which are not violated by the current use or occupancy of such Real Property or the operation of the business or that do not and shall not adversely affect the value, or impair the use or current occupancy of the Real Property.

“Person” means any natural person, corporation, limited liability company, partnership, association, trust or other entity, including a Governmental Authority.

“Personal Data” means, as applicable, (i) any and all information about an individual that either contains data elements that identify the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, (ii) any information that enables a Person to contact the individual (such as information contained in a cookie or an electronic device fingerprint) and (iii) any and all other information, the collection, use, sharing, transfer or other processing of which is regulated by any applicable Law in relation to data protection, data privacy or personal privacy, including, without limitation, personal healthcare information. Personal Data includes (v) personal identifiers such as name, address, Social Security Number, date of birth, driver’s license number or state identification number, Taxpayer Identification Number and passport number, (w) financial information, including credit or debit card numbers, account numbers, access codes, consumer report information, insurance policy number, (x) demographic information, (y) unique biometric data, such as fingerprint, retina or iris image, voice print or other unique physical representation and (z) individual medical or health information (including information of patients, customers, employees, workers, contractors, and third parties who have provided information to Company, and including information relating to services provided by or to third parties).

“Personal Data Obligations” means the Company’s privacy policies (or applicable terms of use) as published on any Company websites or mobile applications or any other privacy policies (or applicable terms of use), Contracts, documents or promises or representations agreed to with employees, consumers or customers, or other Persons, the PCI-DSS, and any applicable Laws, or applicable industry standards, regarding Collection and Use of Personal Data, including but not limited to Laws regarding the use of Personal Data for marketing communications such as the CAN SPAM Act of 2003.

“Pre-Closing Tax Period” means (a) any taxable period ending on or before the Effective Date and (b) with respect to a Straddle Period, any portion thereof ending on and including the Effective Date.

“Pre-Closing Taxes” means all Taxes (other than Transfer Taxes) of, or imposed on, the Company with respect to any Pre-Closing Tax Period.

“Premises” means any building, plant, improvement or structure located on the Real Property.

“Products” means any product that the Company currently sells or has sold at any time in the past and includes, without limitation, the Company’s genetic testing products known as GeneVu and EmbryVu.

“Proprietary Software” means any Software that is owned by Company and is related to the Company’s business.

“Public Software” means any software that is (i) distributed as free software or as open source software (e.g., Linux), or (ii) subject to any licensing or distribution model that includes as a term thereof any requirement for distribution of source code to licensees or third parties, patent license requirements on distribution, restrictions on future patent licensing terms, or other abridgement or restriction of the exercise or enforcement of any Company Intellectual Property Rights through any means, (iii) licensed or distributed under any Public Software License or under less restrictive free or open source licensing and distribution models such as those obtained under the BSD, MIT, Boost Software License and the Beer-Ware Public Software Licenses or any similar licenses, (iv) a public domain dedication or (v) derived from in any manner (in whole or in part), links to, relies on, is distributed with, incorporates or contains any software described in (i) through (iv) above.

“Public Software License” means any of the following licenses or distribution models, or licenses or distribution models similar to any of the following (i) GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL); (ii) the Artistic License (e.g., PERL); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Sun Community Source License (SCSL); (vi) the Sun Industry Standards License (SISL); (vii) the Apache License; and (viii) any licenses that are defined as OSI (Open Source Initiative) licenses as listed on the Opensource.org website.

“Purchase Price” means an amount equal to Forty Million Dollars (\$40,000,000).

“Reference Date” means January 1, 2014.

“Related Party” means (a) any current or former director (or nominee), or officer of the Company, (b) any five percent or greater Stockholder of the Company on a fully-diluted basis and (c) any relative, spouse, officer, director or Affiliate of any of the foregoing Persons.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing of or migrating into or through the environment or any natural or man-made structure.

“Remaining Hold-Back Shares” means (as adjusted for any stock splits, combinations or the like) the Initial Hold-Back Shares *minus* (i) to the extent the Post Closing Adjustment is negative, the number of shares of Parent’s Common Stock equal to the absolute value of the Post Closing Adjustment *divided by* the Trailing Average Share Price, calculated as the date of final determination of the Post-Closing Adjustment, *minus* (ii) for each and every instance where Parent has exercised the Offset Right, the number of shares of Parent’s Common Stock equal to the applicable Stated Damages *divided by* the Trailing Average Share Price, calculated as the applicable date of perfection, agreement or settlement as set forth in Sections 8.3.3, 8.3.4 or 8.3.5.

“Representatives” means, with respect to any Person, the officers, employees, investment bankers, financial advisors, attorneys, accountants, agents and other representatives of such Person.

“Senior Debt” means the Company’s Indebtedness evidenced by that certain Term Loan Agreement, dated as of April 25, 2013, by and between the Company and entities affiliated with Capital Royalty Partners, as amended.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means The Securities Act of 1933, as amended.

“Series A Preferred Stock” means the Company’s Series A Preferred Stock, par value \$0.0001 per share.

“Series B Preferred Stock” means the Company’s Series B Preferred Stock, par value \$0.0001 per share.

“Service” means any service that the Company currently sells or has sold at any time in the past and includes, without limitation, the Company’s genetic counseling services.

“Severance Plan” means the Company’s Executive Severance Pay Plan, effective April 4, 2012 through December 31, 2017 (as amended or succeeded by any other plan or arrangement prior to the Closing).

“Software” means computer software programs and software systems, including all databases, compilations, tool sets, compilers, higher level or “proprietary” languages, related documentation and materials (including all Source Code Materials), whether in source code, object code or human readable form and all software programs and software systems that are work-in-progress on the Closing Date.

“Source Code Materials” as it pertains to source code of any Software means: (a) the software, tools and materials utilized for the operation, development and maintenance of the Software; (b) documentation describing the names, vendors and version numbers of (i) the development tools used to maintain or develop the Software; and (ii) any third-party software or other applications that form part of the Software and are therefore required in order to compile, assemble, translate, bind and load the Software into executable releases; (c) all programmers’ notes, bug lists and technical information, systems and user manuals and documentation for the Software, including all job control language statements, descriptions of data structures, flow charts, technical specifications, schematics, statements or principles of operations, architecture standards and annotations describing the operation of the Software; and (d) all test data, test cases and test automation scripts used for the testing and validating the functioning of the Software.

“Stockholders” means the holders of Company Capital Stock.

“Subsidiary” means, with respect to a Party, any corporation, limited liability company, partnership, association, trust or other entity the accounts of which would be consolidated with those of such Party in such entity’s consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests) are, as of such date, owned by such Party or one or more Subsidiaries of such Party.

“Stark Law” means the Federal Ethics in Patient Referrals Act, 42 U.S.C. § 1395nn, and all regulations promulgated thereunder.

“Tax” or “Taxes” means (a) any or all federal, state, local or foreign taxes or other assessments in the nature of taxes imposed by a Taxing Authority, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, and (b) any or all interest, penalties or additions to tax imposed by any Taxing Authority in connection with any item described in clause (a).

“Tax Returns” means with respect to Taxes any return, report, claim for refund, estimate, information return or statement, declaration of estimated tax or other similar document relating to or required to be filed with any Taxing Authority with respect to Taxes, including any schedule or attachment thereto and including any amendment thereof.

“Tax Sharing Agreement” means any agreement relating to the sharing, allocation or indemnification of Taxes or amounts in lieu of Taxes, or any similar contract or arrangement.

“Taxing Authority” means any Governmental Authority responsible for the administration, assessment and collection of any Taxes.

“Technology” means all inventions, works, discoveries, innovations, know-how, information (including ideas, research and development, formulas, algorithms, compositions, processes and techniques, data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, graphics, illustrations, artwork, documentation and manuals), databases, computer software, firmware, computer hardware, integrated circuits and integrated circuit masks, electronic, electrical and mechanical equipment and all other forms of technology, including improvements, modifications, works in process, derivatives, or changes, whether tangible or intangible, embodied in any form, whether or not protectable or protected by patent, copyright, mask work right, trade secret law, or otherwise and all documents and other materials recording any of the foregoing.

“Third Party Claim” refers to any Action that is instituted, or any claim that is asserted, by any Person not party to this Agreement in respect of an indemnifiable matter under this Agreement.

“Trailing Average Share Price” means the average closing price for shares of Parent’s Common Stock on the New York Stock Exchange (or any other exchange which is then the primary exchange upon which shares of Parent’s Common Stock are traded) for the immediately preceding period of thirty (30) trading days, as adjusted by 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 shares of Parent’s Common Stock during such thirty (30) trading day period.

“Transactions” means any transaction contemplated by this Agreement, including (a) the Merger and the other transactions described in the recitals to this Agreement, (b) the execution, delivery and performance of the Transaction Agreements other than this Agreement and (c) the payment of fees and expenses relating to such transactions by the Company, the Holders and the Management Carveout Plan Participants.

“Transaction Agreements” means this Agreement, the Note Termination Agreements, the Management Carveout Plan Participant Agreements and the Exchange Agent Agreement.

“Upfront Noteholder Consideration Amount” means the sum of (i) the Closing Date Merger Consideration less (ii) the Hold-Back Amount.

“Warrantholder” means Lighthouse Capital Partners VI, L.P.

Terms Defined Elsewhere in this Agreement.

For purposes of this Agreement, the following terms have meanings set forth at the section of this Agreement indicated opposite such term:

| <u>Term</u> | <u>Section</u> |
|--|----------------|
| “Agreement” | Preamble |
| “Allocation Schedule” | 2.8 |
| “Assets” | 3.13 |
| “Audited Financial Statements” | 3.5.1(a) |
| “Balance Sheet Date” | 3.5.1(a) |
| “Broker Fees” | 3.22 |
| “Cap” | 8.2.3(a) |
| “Certificate of Merger” | 2.3 |
| “Closing” | 2.2 |
| “Closing Date” | 2.2 |
| “Company” | Preamble |
| “Company Charter Documents” | 3.1.4 |
| “Company Fundamental Representations” | 8.1 |
| “Company Registrations” | 3.15.3 |
| “Competing Transaction” | 5.12 |
| “Confidential Information” | 5.6 |
| “Conflict” | 3.2.4 |
| “Consultant” | 3.1.2 |
| “Current Consultant” | 3.1.2 |
| “Current Employee” | 3.1.2 |
| “D&O Tail Insurance” | 5.10 |
| “DGCL” | Recitals |
| “Effective Time” | 2.3 |
| “Employees” | 3.1.2 |
| “Employment/Consulting Agreements” | 5.9 |
| “ERISA Affiliate” | 3.10.3 |
| “Estimated Balance Sheet” | 2.8.2 |
| “Exchange Agent” | 2.12.1 |
| “Exchange Agent Agreement” | 2.12.1 |
| “Final Calculation” | 2.14.1 |
| “Financial Statements” | 3.5.1(a) |
| “Fundamental Representations” | 8.1 |
| “Hold-Back Payment Date” | 2.15 |
| “Holders’ Representative” | Preamble |
| “Inbound IP Contracts” | 3.15.4 |
| “Initial Resolution Period” | 2.14.1 |
| “Interim Balance Sheet” | 3.5.1 |
| “Interim Balance Sheet Date” | 3.5.1 |
| “IP Contracts” | 3.15.4 |
| “Leased Property” | 3.14.1 |
| “Letter of Transmittal” | 2.12.2 |
| “Limitation” | 8.2.3(c) |
| “Management Carveout Plan Participant Agreement” | Recitals |
| “Material Contract” | 3.12.3 |

| <u>Term</u> | <u>Section</u> |
|--|----------------|
| “Merger” | Recitals |
| “Merger Sub” | Preamble |
| “MIPS” | 5.14 |
| “MIPS Sale” | 5.14 |
| “Multiemployer Plan” | 3.10.3 |
| “Non-Offset Notice” | 8.4.2 |
| “Note Termination Agreement” | Recitals |
| “Noteholder and Carveout Plan Allocation Schedule” | 2.8.3 |
| “Noteholder MIPS Proceeds” | 5.14 |
| “Objection Notice” | 2.14.1 |
| “Objection Period” | 2.14.1 |
| “Offset Certificate” | 8.3.3 |
| “Offset Right” | 8.3.2 |
| “Outbound IP Contracts” | 3.15.4 |
| “Outside Date” | 7.1.2 |
| “Owned Real Property” | 3.14.1 |
| “Parent” | Preamble |
| “Parent Fundamental Representations” | 8.1 |
| “Parent Material Adverse Effect” | 4.2.2 |
| “Parent Plan” | 5.11.1 |
| “Parties” | Preamble |
| “Payoff Amount” | 2.9(a) |
| “Per Share Amount” | 2.7.3 |
| “Post-Closing Adjustment” | 2.14.3(a) |
| “Preferred Stock Conversion” | 2.7.3 |
| “Real Property” | 3.14.1 |
| “Real Property Leases” | 3.14.1 |
| “Related Party Transaction” | 3.17 |
| “Required Consents” | 5.3.3 |
| “Requisite Stockholder Approval” | 3.2.2 |
| “Reviewing Party” | 2.14.2 |
| “Security Program” | 3.15.7(h) |
| “Settlement” | 8.4.1(d) |
| “Shrink Wrap Licenses” | 3.15.1 |
| “Stated Damages” | 8.3.3 |
| “Straddle Periods” | 5.8.2(a) |
| “Survival Date” | 8.1 |
| “Surviving Corporation” | 2.1 |
| “Tax Claim” | 5.8.3 |
| “Third Party Claim” | 8.3.3(a) |
| “Third Party Indemnification Claim Notice” | 8.3.3(a) |
| “Threshold” | 8.2.3(a) |
| “Title IV Plan” | 3.10.3 |
| “Top Customer, Payor or Supplier” | 3.18 |

ARTICLE II: THE MERGER AND EFFECT OF THE MERGER

Section 2.1 The Merger . Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate corporate existence of Merger Sub shall thereupon cease and the Company shall continue as the surviving corporation and a wholly owned Subsidiary of Parent. The Company after the Merger is sometimes referred to herein as the “Surviving Corporation.”

Section 2.2 Closing . The closing of the Transactions (the “Closing”) shall take place at 10:00 a.m. (Boston time) on the second Business Day following the satisfaction or waiver of the conditions set forth in ARTICLE VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at such time) at the offices of Foley Hoag LLP, Seaport West, 155 Seaport Boulevard, Boston, Massachusetts 02210, unless another time, date or place is agreed to in writing by the Parties (the “Closing Date”).

Section 2.3 Effective Time . Subject to the provisions of this Agreement, as soon as practicable on the Closing Date, the Parties shall file with the Secretary of State of the State of Delaware a certificate of merger substantially in the form attached hereto as Exhibit D, executed in accordance with the relevant provisions of the DGCL (the “Certificate of Merger”). The Merger shall become effective upon the filing of the Certificate of Merger or at such later time as is agreed to by the Parties and specified in the Certificate of Merger (the time at which the Merger becomes effective is herein referred to as the “Effective Time”).

Section 2.4 Effects of the Merger . The Merger shall have the effects set forth in this Agreement and the DGCL. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, (a) all the rights, privileges and powers of the Company and Merger Sub shall vest in the Surviving Corporation, (b) all of the property, real and personal, including causes of action and every other asset of Merger Sub and the Company, shall vest in the Surviving Corporation without further act or deed and (c) all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

Section 2.5 Charter Documents of Surviving Corporation .

2.5.1 Certificate of Incorporation . At the Effective Time, the certificate of incorporation of the Company shall be amended and restated so as to be identical to the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time, except that the name of the Surviving Corporation shall be the name of the Company as of immediately prior to the Effective Time and shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided therein or by applicable Law.

2.5.2 Bylaws . At the Effective Time, the bylaws of the Company shall be amended and restated so as to be identical to the bylaws of Merger Sub, as in effect immediately prior to the Effective Time and shall be the bylaws of the Surviving Corporation until thereafter amended as provided in its Charter Documents and applicable Law.

Section 2.6 Management of the Surviving Corporation .

2.6.1 Board of Directors . Unless otherwise determined by Parent prior to the Effective Time, the Parties shall take all requisite action so that the directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately following the Effective Time, until their respective successors are duly elected and qualified or their earlier death, resignation or removal in accordance with the Charter Documents of the Surviving Corporation.

2.6.2 Officers . Unless otherwise determined by Parent prior to the Effective Time, the Parties shall take all requisite action so that the officers of Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation until their respective successors are duly appointed and qualified or their earlier death, resignation or removal in accordance with the Charter Documents of the Surviving Corporation.

Section 2.7 Effect of the Merger on Capital Stock; Company Options; Company Warrants; and Company Promissory Notes . At the Effective Time, by virtue of the Merger and without any action to be taken on the part of the holder of any shares of the Company Capital Stock or any shares of capital stock of Merger Sub, or on the part of the Company, Parent, Merger Sub or any other Person, the following shall occur:

2.7.1 Capital Stock of Merger Sub . Each share of capital stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and non-assessable share of common stock, par value \$0.01 per share, of the Surviving Corporation and collectively shall constitute the only outstanding shares of capital stock of the Surviving Corporation and each stock certificate of Merger Sub evidencing ownership of any such shares shall evidence ownership of such shares of common stock of the Surviving Corporation.

2.7.2 Cancellation of Securities Held by the Company . Any shares of Company Capital Stock that are owned by the Company immediately prior to the Effective Time shall be automatically canceled and shall cease to exist and no consideration shall be delivered in exchange therefor.

2.7.3 Conversion of Company Capital Stock . Each issued share of Company Preferred Stock outstanding prior to the Effective Time (other than shares to be canceled in accordance with Section 2.7.2) shall be converted into shares of Company Common Stock in accordance with the Company's certificate of incorporation (the "Preferred Stock Conversion ") and Section 5.2 below, and each issued share of Company Capital Stock outstanding immediately prior to the Effective Time (other than shares to be canceled in accordance with Section 2.7.2 or Dissenting Shares but otherwise including the shares of Company Common Stock resulting from the Preferred Stock Conversion) shall, subject to the terms and conditions of this Agreement, be converted into the right to receive \$0.0001 per share (the "Per Share Amount "), less any applicable withholding taxes.

2.7.4 Treatment of Company Options and Company Warrants.

(a) Company Options. Prior to the Closing Date, the Company will send to Optionholders a notice specifying the number of shares of Company Common Stock into which the Company Options are exercisable and informing the Optionholders of the Transactions. Optionholders who exercise Company Options prior to the Closing Date will be treated as Stockholders with respect to any outstanding shares of Company Common Stock issued in respect of such exercised Options. Prior to the Effective Time, the Company will cause any unexercised Company Options to be terminated, with no further force or effect.

(b) Company Warrants. Prior to the Closing Date, the Company will send to the Warrantholder a notice specifying the number Series A Preferred Stock and number of Series B Preferred Stock into which the Company Warrants are exercisable and informing the Warrantholder of the Transactions. If the Warrantholder exercises any of the Company Warrants, it will be treated as a Stockholder with respect to any outstanding shares of Company Capital Stock issued in respect of such exercised Company Warrants. Prior to the Effective Time, the Company will cause any unexercised Company Warrants to be terminated, with no further force or effect.

2.7.5 Promissory Notes. Pursuant to the Note Termination Agreements, each Company Promissory Note will be terminated effective as of the Closing in consideration of the share issuances contemplated by Section 2.10 and the nontransferable contingent right to receive a pro rata portion of (i) any Post-Closing Adjustment shares issuable with respect to such Company Promissory Note in accordance with Section 2.14, (ii) any Remaining Hold-Back Shares issuable with respect to such Company Promissory Note in accordance with Section 2.15, and (iii) any Noteholder MIPS Proceeds resulting from a MIPS Sale consummated in accordance with Section 5.14 payable with respect to such Company Promissory Note. For the avoidance of doubt, the maximum aggregate amount potentially payable to all Noteholders and all Management Carveout Plan Participants combined is the aggregate of the Upfront Noteholder Consideration Amount, the Remaining Hold-Back Shares and the Noteholder MIPS Proceeds (such that, for example, the participation of the Management Carveout Plan Participants directly reduces the amounts that could otherwise be available for payment to the Noteholders).

2.7.6 Rights Cease to Exist. As of the Effective Time, all shares of Company Capital Stock, and all options, warrants and other securities convertible, exercisable or exchangeable for, or otherwise granting the right to acquire, Company Capital Stock, shall no longer be outstanding, shall automatically be canceled and shall cease to exist and each holder of a Certificate shall cease to have any rights with respect thereto, except the rights set forth in this Section 2.7.

Section 2.8 Delivery of Calculations . Not less than two (2) Business Days prior to the Closing Date, the Company shall prepare and deliver to Parent (for Parent's review and approval) in writing:

2.8.1 the Company's calculation of the Closing Date Merger Consideration and the Fully Diluted Shares of Company Capital Stock, setting forth, in reasonable detail, an estimation of each component thereof;

2.8.2 the Company's estimated balance sheet as of immediately prior to the Closing (the "Estimated Balance Sheet");

2.8.3 the name, address and tax identification number of each Noteholder and Management Carveout Plan Participant, the percentage of the Upfront Noteholder Consideration Amount payable to each Noteholder, and the percentage of the Management Carveout Plan Consideration payable to each Management Carveout Plan Participant (the "Noteholders and Carveout Plan Allocation Schedule");

2.8.4 the name, address and tax identification number of the holders of Company Capital Stock and the number of shares of Company Capital Stock (both by class or series and on an as converted to Company Common Stock basis) held by such Persons;

2.8.5 the Company's calculation of the amount of Taxes (if any) required to be withheld from any payments to Holders or Management Carveout Plan Participants under this Agreement; and

2.8.6 a certificate of a duly authorized officer of the Company certifying the foregoing.

The calculations listed in the foregoing Section 2.8.1 through 2.8.6 shall be set forth on a spreadsheet referred to herein as the "Allocation Schedule". The Parties agree that Parent, Merger Sub and the Surviving Corporation will have the right to rely on the Allocation Schedule as setting forth true, complete and accurate listing of all amounts due to be paid by Parent, Merger Sub and the Company to the Noteholders and Management Carveout Plan Participants. Parent, Merger Sub and the Surviving Corporation will not have any liability with respect to the allocation of the Upfront Noteholder Consideration Amount or Management Carveout Plan Consideration, the Aggregate Per Share Consideration or any Post-Closing Adjustment or Hold-Back Amount made to Noteholders or Management Carveout Plan Participants in accordance with the Allocation Schedule. Notwithstanding anything in this Agreement to the contrary, the Estimated Balance Sheet and the Company's estimation of the Net Working Capital shall be consistent with the Accounting Methodology and shall reflect all vacation, sick leave, severance and/or other remuneration required by Law, Contract or policy of the Company to be paid to Employees for periods on or prior to the Closing Date.

Section 2.9 Payments At Closing . At the Closing, Parent shall make, or cause to be made, the following payments, by wire transfer of immediately available funds:

(a) to the holders of any Senior Debt, the aggregate amount of the Senior Debt outstanding as of the Closing (the principal amounts of which are set forth on Schedule 3.5.9) pursuant to payoff letters from such holder (A) indicating the amount required to discharge such Senior Debt in full and terminate all lines of credit thereunder at the Closing (the "Payoff Amount") and (B) agreeing to release applicable Liens upon receipt of the applicable Payoff Amount;

(b) to the payees thereof, the Company Transaction and Bonus Expenses due as of the Closing, in each case as directed in writing by the Company prior to the Closing pursuant to invoices or other evidence reasonably satisfactory to Parent, except that Parent shall cause Change of Control Payments to Employees to be paid through the Surviving Corporation's payroll system; and

(c) to the Exchange Agent, the Aggregate Per Share Consideration for distribution to the Stockholders pursuant to Section 2.7.3 and Section 2.12.

Section 2.10 Issuances of Shares After Closing . Within ten (10) Business Days after the Closing Date, Parent shall deliver certificates or book entries reflecting an amount of shares of Parent's Common Stock equal to the *quotient* of (x) the Upfront Noteholder Consideration Amount *divided by* (y) the Trailing Average Share Price calculated as of the Signing Date, to be allocated among the Noteholders and the Management Carveout Plan Participants, in each case in accordance with the Note Termination Agreements and Management Carveout Plan, as applicable, and the Noteholders and Carveout Plan Allocation Schedule; provided, however, that any delivery of shares of Parent's Common Stock to any Noteholder or Management Carveout Plan Participant shall be subject to the payment by such Noteholder or Management Carveout Plan Participant of such amounts as are required to be deducted or withheld from such consideration under the Code or under any other applicable Tax Law as well as the delivery of any reasonably appropriate Tax forms, including Form W-9 (or the appropriate Form W-8, as applicable).

Section 2.11 Non-Conversion .

2.11.1 Dissenting Shares . Notwithstanding anything in this Agreement to the contrary, any Dissenting Shares shall not be converted into or represent a right to receive the applicable consideration for Company Capital Stock set forth in Section 2.7, but instead the holder thereof shall only be entitled to such rights as are provided by the DGCL. In the event that a holder properly perfects such holder's appraisal, dissenters' or similar rights by demanding and not effectively withdrawing or losing such holder's appraisal, dissenters' or similar rights for any shares of Company Capital Stock, the Exchange Agent shall deliver to Parent such holder's portions of the Aggregate Per Share Consideration allocable to such Dissenting Shares at the time such rights are perfected and such portions are determined and are received by the Exchange Agent.

2.11.2 Withdrawal or Loss of Rights . Notwithstanding the provisions of Section 2.11.1, if any holder of Dissenting Shares effectively withdraws or loses (through failure to perfect or otherwise) such holder's appraisal or dissenters' rights with respect to such shares under the DGCL, then, as of the later of the Effective Time and the occurrence of such event, (a) such holder's shares shall automatically convert into and represent only the right to receive the consideration for Company Capital Stock, as applicable, set forth in and subject to the provisions of this Agreement, upon surrender of the Certificate(s) formerly representing such shares and (b)

Parent (to the extent the following amounts have been previously delivered by the Exchange Agent to Parent pursuant to Section 2.11.1 and not returned to the Exchange Agent) or the Exchange Agent shall deliver to such holder such holder's portions of the Aggregate Per Share Consideration attributable to such shares at the time such portions are determined.

2.11.3 Demands for Appraisal. The Company shall give Parent (a) prompt notice of any written demand for appraisal received by the Company pursuant to the applicable provisions of the DGCL and (b) the opportunity to participate in all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent, make any payment with respect to any such demands or offer to settle or settle any such demands. Any communication to be made by the Company to any Stockholder with respect to such demands must be submitted and consented to in writing by Parent prior to delivery to any such Stockholder.

Section 2.12 Exchange Agent; Exchange of Certificates .

2.12.1 Wilmington Trust, National Association will act as exchange agent hereunder (in such capacity, the "Exchange Agent") for the delivery of the Aggregate Per Share Consideration. At, or prior to the Effective Time, Parent will deposit (or cause to be deposited) with the Exchange Agent, for the benefit of the Stockholders, the Aggregate Per Share Consideration. The Exchange Agent will hold and distribute the Aggregate Per Share Consideration payable to the Stockholders pursuant to the provisions of an exchange agent agreement between Parent and the Exchange Agent in substantially the form attached hereto as Exhibit E (the "Exchange Agent Agreement").

2.12.2 Following the Effective Time, Parent shall cause the Exchange Agent to send to each Stockholder of record: (i) a letter of transmittal substantially in the form attached hereto as Exhibit F (each, a "Letter of Transmittal") (which shall specify that delivery shall be effected and risk of loss and title to the Certificates shall pass, only upon receipt of the Certificates by the Exchange Agent) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the right to receive the applicable portion of the Aggregate Per Share Consideration. Upon surrender by a holder of a Certificate for cancellation to the Exchange Agent, together with such Letter of Transmittal, duly completed and validly executed in accordance with the instructions (and such other customary documents as may reasonably be required by the Exchange Agent), the holder of such Certificate shall be entitled to receive in exchange therefor, subject to Section 2.12.6, the consideration, if any, provided for herein and the Certificate so surrendered shall thereafter be canceled. If payment of any portion of the Aggregate Per Share Consideration is to be made to any Person other than the Person in whose name the surrendered Certificate is registered, it shall be a condition of payment that (y) the Certificate so surrendered be properly endorsed or otherwise be in proper form for transfer in accordance with this Section 2.12.2 and (z) the Person requesting such payment shall have paid any transfer and other Taxes required by reason of the payment of the applicable portion of the Aggregate Per Share Consideration to a Person other than the registered holder of such Certificate surrendered or shall have established to the reasonable satisfaction of Parent that such Tax either has been paid or is not applicable. After the Effective Time, each Certificate shall represent only the right to receive the applicable portion of the Aggregate Per Share Consideration as contemplated by this ARTICLE II.

2.12.3 Transfer Books; No Further Ownership Rights in Company Stock. The right to receive the applicable portion of the Aggregate Per Share Consideration upon the surrender for exchange of Certificates in accordance with the terms of this ARTICLE II shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Capital Stock previously represented by such Certificates and at the close of business on the day on which the Effective Time occurs, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Capital Stock that were outstanding immediately prior to the Effective Time. Subject to the last sentence of Section 2.12.4, if, at any time after the Effective Time, Certificates are presented to Parent or the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this ARTICLE II.

2.12.4 Lost, Stolen or Destroyed Certificates. If any Certificate is lost, stolen or destroyed, upon the making of an affidavit of the fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Exchange Agent and Parent, the posting by such Person of a bond in such amount as the Exchange Agent and Parent may reasonably determine necessary and an indemnity against any claim that may be made with respect to such Certificate, the Exchange Agent shall pay, subject to Section 2.12.6, in exchange for such lost, stolen or destroyed Certificate, the applicable portion of the Aggregate Per Share Consideration to be paid in respect of the shares of Company Capital Stock formerly represented by such Certificate, as contemplated by this ARTICLE II. Notwithstanding anything in this Agreement to the contrary, Parent shall not be obligated or required to post a bond for any Holder for any reason in connection with a lost, stolen or destroyed Certificate or otherwise.

2.12.5 Termination of Exchange Fund. At any time after the first anniversary of the date on which any payments with respect to the Aggregate Per Share Consideration are payable, Parent shall be entitled to require the Exchange Agent to deliver to it any amount distributed to the Exchange Agent in respect of such payments that has not been disbursed to the holders of the Certificates and thereafter such holders may look only to Parent (subject to abandoned property, escheat or other similar Laws) as general creditors thereof with respect to the payment of any portion thereof that may be payable upon surrender of any Certificates held by such holders.

2.12.6 No Liability. Notwithstanding anything in this Agreement to the contrary, none of the Parties or the Exchange Agent shall be liable to any Person for any portion of the payments contemplated by this ARTICLE II delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

2.12.7 Withholding Taxes. Parent, the Company, the Surviving Corporation and the Exchange Agent shall be entitled to deduct and withhold from that portion of any payments contemplated by this ARTICLE II or any other amount payable to a Holder or Management Carveout Plan Participant pursuant to this Agreement, and shall pay to the appropriate Taxing Authority such amounts that are required to be deducted and withheld with

respect to the making of such payment under any Tax Law. To the extent amounts are so deducted and withheld and timely paid to the appropriate Taxing Authority, such amounts shall be treated for purposes of this Agreement as having been paid to the Holder or Management Carveout Plan Participant in respect of which such deduction and withholding were made.

Section 2.13 Adjustments . Notwithstanding any provision of this ARTICLE II to the contrary (but without in any way limiting the covenants in Section 5.1 (Conduct of Business)), if between the date hereof and the Effective Time the outstanding shares of any class or series of Company Capital Stock are changed into a different number of shares or a different class or series by reason of the occurrence or record date of any stock dividend, subdivision, reclassification, recapitalization, split, combination, exchange of shares or similar transaction, the per share consideration payable pursuant to Section 2.7 shall be appropriately adjusted to reflect such stock dividend, subdivision, reclassification, recapitalization, split, combination, exchange of shares or similar transaction.

Section 2.14 Post-Closing Adjustment Amount

2.14.1 Preparation of Closing Statement . Within ninety (90) days following the Closing Date, Parent shall prepare and deliver to Holders' Representative a statement as of the Closing (the "Final Calculation") setting forth its calculation of each of the following:

- (a) the Closing Net Working Capital;
- (b) the Company Transaction and Bonus Expenses;
- (c) the Company Debt; and
- (d) the resulting Final Merger Consideration.

The Final Calculation shall be accompanied by such supporting documentation reasonably necessary to derive the numbers set forth therein. The Final Calculation shall be final, conclusive and binding upon the Parties unless Holders' Representative delivers a written notice to Parent of any objection to the Final Calculation (the "Objection Notice") within 30 (thirty) days (the "Objection Period") after delivery of the Final Calculation. Any Objection Notice must set forth in reasonable detail (i) any item on the Final Calculation that Holders' Representative believes has not been prepared in accordance with this Agreement and the correct amount of such item and (ii) Holders' Representative's alternative calculation of the Closing Net Working Capital, the Company Transaction and Bonus Expenses or Company Debt, as the case may be. Any Objection Notice must specify, with reasonable particularity, all facts that form the basis of such disagreements and all statements by Persons (who shall be identified by name) and documents relied upon by Holders' Representative as forming the basis of such disagreement. If Holders' Representative gives any such Objection Notice within the Objection Period, then Holders' Representative and Parent shall attempt in good faith to resolve any dispute concerning the item(s) subject to such Objection Notice. If Holders' Representative and Parent do not resolve the issues raised in the Objection Notice within 30 days of the date of delivery of such notice (the "Initial Resolution Period"), such dispute shall be resolved in accordance with the procedures set forth in Section 2.14.2 . Any item or amount which has not been disputed in the Objection Notice shall be final, conclusive and binding on the Parties on the expiration of the Initial Resolution Period.

2.14.2 Resolution of Disputes. If Parent and Holders' Representative have not been able to resolve a dispute within the Initial Resolution Period, either Party may submit such dispute to and such dispute shall be resolved fully, finally and exclusively through the use of an independent accounting firm selected by Parent and reasonably acceptable to the Holders' Representative. If such independent accounting firm is not willing to serve as an independent accounting firm for this purpose, then another independent international accounting firm shall be selected to serve as such by mutual agreement of Parent and Holders' Representative (such accounting firm, the "Reviewing Party"). The fees and expenses of the Reviewing Party incurred in the resolution of such dispute shall be borne by the parties in such proportion as is appropriate to reflect the relative benefits received by the Holders, Management Carveout Plan Participants and Parent from the resolution of the dispute. For example, if Holders' Representative challenges the calculation in the Final Calculation by an amount of \$100,000, but the Reviewing Party determines that Holders' Representative has a valid claim for only \$40,000, Parent shall bear 40% of the fees and expenses of the Reviewing Party and Holders' Representative on behalf of the Holders and Management Carveout Plan Participants shall bear the other 60% of such fees and expenses. The Reviewing Party shall determine (with written notice thereof to Holders' Representative and Parent) as promptly as practicable, but in any event within 30 days following the date on which Final Calculation and written submissions detailing the disputed items are delivered to the Reviewing Party (a) whether the Final Calculation was prepared in accordance with the terms of this Agreement or, alternatively, (b) only with respect to the disputed items submitted to the Reviewing Party, whether and to what extent (if any) the Final Calculation requires adjustment and a written explanation in reasonable detail of each such required adjustment, including the basis therefor. Parent and Holders' Representative shall require the Reviewing Party to enter into a confidentiality agreement on terms agreeable to Parent, Holders' Representative and the Reviewing Party. The procedures of this Section 2.14.2 are exclusive and, the determination of the Reviewing Party shall be final and binding on the Parties. The decision rendered pursuant to this Section 2.14.2 may be filed as a judgment in any court of competent jurisdiction.

2.14.3 Post-Closing Purchase Price Adjustment.

(a) The "Post-Closing Adjustment" shall be an amount equal to the Final Merger Consideration minus the Closing Date Merger Consideration and, for the avoidance of doubt, may be a positive or a negative number.

(b) If the Post-Closing Adjustment is a negative number, the Remaining Hold-Back Shares shall be adjusted as provided in the definition thereof (i.e., offsetting the Post-Closing Adjustment against the Remaining Hold-Back Shares).

(c) If the Post-Closing Adjustment is a positive number, Parent shall, within ten (10) Business Days after the final determination of the Post-Closing Adjustment, issue certificates or book entries reflecting an amount of shares of Parent's Common Stock equal to the quotient of (x) the Post-Closing Adjustment divided by (y) the Trailing Average Share Price

calculated as of the Signing Date, to be allocated among the Noteholders and the Management Carveout Plan Participants, in each case in accordance with the Note Termination Agreements and Management Carveout Plan, as applicable, and the Noteholders and Carveout Plan Allocation Schedule; provided, however, that any delivery of shares of Parent's Common Stock to any Noteholder or Management Carveout Plan Participant shall be subject to the payment by such Noteholder or Management Carveout Plan Participant of such amounts as are required to be deducted or withheld from such consideration under the Code or under any other applicable Tax Law as well as the delivery of any reasonably appropriate Tax forms, including Form W-9 (or the appropriate Form W-8, as applicable).

Section 2.15 Hold-Back Amount and Payment . On the date that is (i) twelve (12) months following the Closing Date or (ii) thirteen (13) months following the Closing Date if Parent, in its sole discretion, determines that additional time is necessary to assert a claim to exercise the Offset Right (either such date, the "Hold-Back Payment Date"), Parent shall deliver certificates or book entries reflecting the Remaining Hold-Back Shares, to be allocated among the Noteholders and the Management Carveout Plan Participants, in each case in accordance with the Note Termination Agreements and Management Carveout Plan, as applicable, and the Noteholders and Carveout Plan Allocation Schedule; provided, however, that if, when shares of Parent's Common Stock would otherwise be distributed pursuant to this Section 2.15, there shall exist a good faith claim by Parent to exercise the Offset Right, all or a portion of such shares as determined by Parent (in its reasonable discretion) to represent the Losses at issue (including, if applicable, as to any specific Noteholder or Management Carveout Plan Participant) shall be withheld from payment until such time as the claim has been perfected, in which case the Offset Right shall apply against such portion of the shares at issue and the balance of any withheld portion (if applicable) shall be distributed to the Noteholders and Management Carveout Plan Participants (or, as applicable, to the affected Noteholders and Management Carveout Plan Participants) as contemplated by this Agreement; and provided, further, that any delivery of shares of Parent's Common Stock to any Noteholder or Management Carveout Plan Participant shall be subject to the payment by such Noteholder or Management Carveout Plan Participant of such amounts as are required to be deducted or withheld from such consideration under the Code or under any other applicable Tax Law as well as the delivery of any reasonably appropriate Tax forms, including Form W-9 (or the appropriate Form W-8, as applicable)..

ARTICLE III: REPRESENTATIONS AND WARRANTIES OF THE COMPANY

As a material inducement to Parent and Merger Sub to enter into this Agreement and effect the Merger, with the understanding that Parent and Merger Sub are relying thereon in entering into this Agreement and consummating the Transactions (including the Merger), the Company hereby represents and warrants to Parent and Merger Sub as follows:

Section 3.1 Organizational Matters .

3.1.1 Valid Existence; Good Standing. The Company is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and has all requisite power and authority to own or lease all of its properties and assets and to carry on its business as now or currently proposed to be conducted. The Company is duly licensed or

qualified to do business and is in good standing under the laws of each jurisdiction set forth in Schedule 3.1.1, which represent all of the jurisdictions in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased or licensed by it makes such licensing or qualification necessary.

3.1.2 Operations. Schedule 3.1.2 lists each state and country in which the Company has any employee or officer of the Company (each a “Current Employee”) or has Facilities. Current Employees, together with any former employees or officers of the Company, are referred to herein individually as an “Employee” and collectively as “Employees.” Schedule 3.1.2 lists each state and country in which the Company has any individual consultant or independent contractor or director (who is not an Employee) (each a “Current Consultant”) as of the date hereof. Current Consultants, together with any former individual consultant or independent contractor or director (who is not an Employee) of the Company, are referred to herein individually as a “Consultant” and collectively as “Consultants.”

3.1.3 Subsidiaries. The Company has no Subsidiaries. Except as set forth in Schedule 3.1.3, the Company does not own and never has owned, directly or indirectly, any shares of capital stock, voting securities, or equity interests in any Person. The Company has no obligation to make an investment (in the form of a purchase of equity securities, loan, capital contribution or otherwise) directly or indirectly in any Person.

3.1.4 Corporate Documents. The Company has delivered to Parent true and complete copies of the certificate of incorporation and bylaws of the Company in each case as the same may have been amended from time to time (the “Company Charter Documents”). All such Company Charter Documents are unmodified and in full force and effect and the Company is not in violation of any provision of the Company Charter Documents. The Company’s Board of Directors has not proposed or approved any amendment of any of the Company Charter Documents. The Company has delivered to Parent and its representatives true and complete copies of the stock ledger of the Company and of the minutes of all meetings of the Stockholders, the Board of Directors and each committee of the Board of Directors of the Company held since the Reference Date.

3.1.5 Officers and Directors. Schedule 3.1.5 lists all of the directors and officers of the Company as of the date hereof.

Section 3.2 Authority; Noncontravention; Voting Requirements .

3.2.1 Power and Authority. The Company has all necessary power and authority to execute and deliver this Agreement and the Transaction Agreements to which it is a party and to perform all of its obligations thereunder and to consummate the Transactions (including the Merger).

3.2.2 Due Authorization of Agreement. The Company’s Board of Directors, at a meeting duly called and held pursuant to the DGCL, has unanimously (a) approved and declared advisable and in the best interests of the Company and its Stockholders the Transaction Agreements and the Transactions (including the Merger) and (b) recommended that the Stockholders adopt this Agreement and approve the Merger. The execution, delivery and

performance by the Company of this Agreement and the Transaction Agreements to which it is a party and the consummation by it of the Transactions (including the Merger) have been duly authorized by the Company's Board of Directors and, subject to adoption of this Agreement by the affirmative vote or written consent of the Stockholders representing the requisite number of shares of Company Capital Stock required under the DGCL (the "Requisite Stockholder Approval"), no other action on the part of the Company's Board of Directors or its Stockholders is necessary to authorize the execution, delivery and performance by the Company of this Agreement and the Transaction Agreements to which it is a party and the consummation by it of the Transactions (including the Merger).

3.2.3 Valid and Binding Agreements. This Agreement and each of the other Transaction Agreements to which the Company is a party have been duly executed and delivered by the Company. Assuming due authorization, execution and delivery of this Agreement and the other Transaction Agreements by the other Parties hereto and thereto, this Agreement constitutes and the other Transaction Agreements shall, when executed and delivered, constitute, the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that their enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

3.2.4 No Conflict. Except as set forth in Schedule 3.2.4, neither the execution and delivery by the Company of this Agreement and any Transaction Agreement to which the Company is a party nor the consummation of the Transactions (including the Merger), nor compliance by the Company with any of the terms hereof or thereof, shall conflict with or result in any violation of or default under (with or without notice or lapse of time, or both) or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit or result in the creation of any Lien upon any of the properties or assets of the Company (any such event, a "Conflict") under (i) any provision of the Company Charter Documents or any resolutions adopted by the Company's Board of Directors or Stockholders, (ii) any material Contract to which the Company is a party or by which any of its properties or assets may be bound or affected, or (iii) any Permit issued to the Company or any Order or Law applicable to the Company or any of its properties or assets (whether tangible or intangible). Except as set forth in Schedule 3.2.4, following the Closing Date, the Company shall continue to be permitted to exercise all of its rights under the material Contracts without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company would otherwise be required to pay pursuant to the terms of such material Contracts had the Transactions contemplated by this Agreement not occurred.

Section 3.3 Capitalization .

3.3.1 Authorized and Issued Securities. The authorized capital stock of the Company consists of 37,000,000 shares of Company Common Stock and 22,580,000 shares of Company Preferred Stock, of which 12,980,000 shares are designated as Series A Preferred Stock and 9,600,000 shares are designated as Series B Preferred Stock. The capitalization of the Company is as follows: (a) 4,793,798 shares of Company Common Stock are issued and outstanding, (b) no shares of Company Common Stock are held by the Company in its treasury,

(c) 6,569,280 shares of Company Common Stock are subject to outstanding options under the Company Option Plan, (d) no outstanding options have been issued outside the Company Option Plan, (e) 132,770 shares of Series A Preferred Stock and 233,333 shares of Series B Preferred Stock are subject to the Company Warrants, and no other shares of Company Capital Stock are subject to any Company Warrants, (f) 22,169,358 shares of Company Preferred Stock are issued and outstanding, of which 12,836,022 are designated as Series A Preferred Stock and 9,333,336 are designated as Series B Preferred Stock, (g) no shares of Company Preferred Stock are subject to outstanding options under the Company Option Plan and (g) a sufficient number of each class and series of shares of Company Capital Stock is available for issuance upon exercise of outstanding options under the Company Option Plan, upon exercise of the Company Warrants, and upon conversion of the Company Preferred Stock into Company Common Stock. Each share of Company Preferred Stock is convertible into one share of Company Common Stock. Except as set forth in this Section 3.3.1, there are no and as of the Effective Time there shall be no, shares of Company Capital Stock, voting securities or equity interests of the Company issued and outstanding or any subscriptions, options, warrants, calls, convertible or exchangeable securities, rights, commitments or agreements of any character providing for the issuance of any shares of capital stock, voting securities or equity interests of the Company, including any representing the right to purchase or otherwise receive any Company Capital Stock.

3.3.2 Ownership of Stock, Options and Warrants. Schedule 3.3.2 sets forth a complete and accurate list of each of the record holders of (a) each class or series of the Company Capital Stock and the number of shares of each such class or series the Company Capital Stock held by each holder as of the date hereof and the number of shares or other securities into which such Company Capital Stock is convertible, listed by class and series, (b) all Company Options and the exercise price, date of grant and number of shares of Company Common Stock for which such Company Options are exercisable by each such Holder as of the date hereof and the expiration date and vesting schedules of each such Company Option (noting specifically any options subject to vesting acceleration upon the Merger or certain terminations of service following the Merger), (c) all Company Warrants and the exercise price, date of issuance and number and class of shares of Company Capital Stock for which such Company Warrants are exercisable (including, as applicable, by the Warrantholder) and the expiration date and vesting schedules of each such Company Warrant (noting specifically any Company Warrants subject to vesting acceleration upon the Merger), and (d) all Company Promissory Notes, date of issuance, principal amount outstanding thereunder, accrued interest thereon as of the date of this Agreement and the number of shares of Series B Preferred Stock into which such Company Promissory Notes are currently convertible. All issued and outstanding shares of Company Capital Stock are owned of record and beneficially, as set forth in Schedule 3.3.2.

3.3.3 Valid Issuance; No Preemptive or Other Rights.

(a) All issued and outstanding shares of Company Capital Stock (i) are, and all shares of Company Capital Stock that may be issued pursuant to the exercise of Company Options or Warrants and the conversion of the Company Promissory Notes or outstanding shares of any class or series of Company Preferred Stock shall be, when issued in accordance with the respective terms thereof, duly authorized, validly issued, fully paid and nonassessable and (ii) except as set forth in Schedule 3.3.3, are not subject to, nor were issued in

violation of, any preemptive rights, rights of first offer or refusal, co-sale rights or similar rights arising under applicable Law or pursuant to the Company Charter Documents, or any Contract to which the Company is a party or by which it is bound and have been offered, issued, sold and delivered by the Company in compliance with all registration or qualification requirements (or applicable exemptions therefrom) of applicable federal, state and foreign securities Laws. Each Company Option granted under the Company Option Plan was duly authorized by all requisite corporate action on a date no later than the grant date and has an exercise price per share at least equal to the fair market value of a share of Company Common Stock on the grant date. Except as set forth in Schedule 3.3.3, the Company is not under any obligation to register any of its presently outstanding securities, or securities issuable upon exercise or conversion of such securities, under the Securities Act or any other Law.

(b) The rights, preferences and privileges of the Company Capital Stock are as set forth in the Company Charter Documents. There is no liability for dividends accrued and/or declared but unpaid with respect to the outstanding Company Capital Stock. The Company is not subject to any obligation to repurchase, redeem or otherwise acquire any shares of Company Capital Stock or any other voting securities or equity interests (or any options, warrants or other rights to acquire any shares of Company Capital Stock, voting securities or equity interests) of the Company. Except as provided for in this Agreement or set forth in Schedule 3.3.3, to the Company's Knowledge, there are no voting trusts or other agreements or understandings with respect to the voting of the Company Capital Stock. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or other similar rights with respect to the Company.

(c) True and complete copies of all form agreements and instruments (and any amendments thereto, if applicable) relating to or issued under the Company Option Plan have been delivered to Parent; there are no agreements to amend, modify or supplement such agreements or instruments from the forms thereof provided to Parent; and all equity grants under the Company Option Plan have been made pursuant to agreements and instruments and do not deviate from such form agreements and instruments.

Section 3.4 No Consents or Approvals . Except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, the receipt of the Requisite Stockholder Approval and as set forth on Schedule 3.4, no consents or approvals of, filings with, or notices to any Governmental Authority or Person are required to be made or obtained by the Company for the valid execution, delivery and performance of this Agreement or the other Transaction Agreements to which it is a party, the consummation of the Transactions (including the Merger), and the operation of the Company's business in the ordinary course after Closing, including, without limitation, the continued validity of the Company's Permits.

Section 3.5 Financial Matters .

3.5.1 Financial Statements .

(a) Schedule 3.5.1 sets forth the following financial statements of the Company (collectively, the “Financial Statements”): the audited balance sheets and related audited statements of income, cash flows and stockholders’ equity as of and for the fiscal years ended December 31, 2014, 2015 and 2016 (such audited financial statements, collectively, the “Audited Financial Statements” and December 31, 2016, the “Balance Sheet Date”) and the unaudited balance sheet and the related unaudited statements of income, cash flows and stockholders’ equity as of and for the six-month period ended June 30, 2017 (the “Interim Balance Sheet” and such date the “Interim Balance Sheet Date”).

(b) The books and records of the Company (i) have been and are being maintained in accordance with GAAP and (ii) are complete, properly maintained and do not contain or reflect any material inaccuracies or discrepancies.

3.5.2 Fair Presentation . The Financial Statements were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby. The Financial Statements fairly present the financial condition of the Company as of such dates and the results of operations of the Company for such periods, and were derived from and are consistent with the books and records of the Company; *provided, however* , that the Financial Statements as of and for the period ended on the Interim Balance Sheet Date are subject to normal year-end adjustments (which shall not be material individually or in the aggregate). Since the Reference Date, the Company has not effected any material change in any method of accounting or accounting practice.

3.5.3 Internal Controls; Financial Controls . The Company maintains systems of internal accounting and financial reporting controls that are sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including policies and procedures sufficient to provide reasonable assurance: (i) that the Company maintains records that in reasonable detail accurately and fairly reflect the Company’s transactions and dispositions of assets; (ii) that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP; (iii) that receipts and expenditures are being made only in accordance with authorizations of management and the Company’s board of directors; and (iv) regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company’s assets that could have a material effect on the financial statements. The Company has delivered to Parent a true and complete copy of any disclosure (or, if unwritten, a summary thereof) by any representative of the Company to the Company’s independent auditors relating to any material weaknesses in internal controls and any significant deficiencies in the design or operation of internal controls that would adversely affect the ability of the Company to record, process, summarize and report financial data. The Company has no Knowledge of any fraud or whistle-blower allegations, whether or not material, that involve management or other Employees or Consultants who have or had a significant role in the internal control over financial reporting of the Company. Since the Reference Date, there have been no material changes in the Company’s internal control over financial reporting.

3.5.4 No Undisclosed Liabilities. Except as set forth in Schedule 3.5.4, the Company does not have any Liabilities that are not reflected or reserved against on the face of (and not in the notes to) the Financial Statements, except Liabilities (a) incurred by the Company in connection with the preparation, execution, delivery and performance of the Transaction Agreements and included in the Company Transaction and Bonus Expenses and as set forth on Schedule 3.5.4, or (b) which have arisen in the Ordinary Course of Business since the Interim Balance Sheet Date and which are not in excess of \$25,000 in the aggregate.

3.5.5 Off-Balance-Sheet Arrangements. There are no “off-balance-sheet arrangements” (within the meaning of Item 303 of Regulation S-K promulgated by the SEC) with respect to the Company.

3.5.6 Accounts Receivable. Schedule 3.5.6 sets forth a complete and accurate list of all accounts receivable of the Company as of the Balance Sheet Date, together with an aging schedule indicating a range of days elapsed since invoice. Except as disclosed in Schedule 3.5.6, all of the accounts receivable of the Company (a) are valid receivables that have arisen from bona fide transactions in the Ordinary Course of Business, (b) are not subject to valid counterclaims or setoffs and (c) are current and will be collectible in accordance with their terms at their recorded amounts assuming reasonable collection efforts in the Ordinary Course of Business. No Person has any Lien (other than a Permitted Lien) on any accounts receivable of the Company. No payer of any accounts receivable of the Company is a Related Party.

3.5.7 Inventory. All inventory of the Company as of the date hereof consists of a quality and quantity usable and saleable in the Ordinary Course of Business. All inventory not written off has been priced at the lower of cost or market value on a first in, first out basis. The quantities of each item of inventory as of the date hereof are reasonable in the present circumstances of the Company.

3.5.8 Bank Accounts. Schedule 3.5.8 sets forth an accurate list and summary description (including name and address) of each bank and other financial institution in which the Company maintains an account (whether checking, savings or otherwise), lock box or safe deposit box and the names of the persons having signing authority or other access thereto. All cash in such accounts is held in demand deposits and is not subject to any restriction as to withdrawal.

3.5.9 Company Debt. Except as set forth in Schedule 3.5.9, there is no Company Debt. With respect to each item of Company Debt, Schedule 3.5.9 accurately sets forth the name of the creditor, the Contract under which such debt was issued, the name and address of the creditor, the principal amount of the debt and a description of the collateral if secured. The Company is not in default with respect to any outstanding Company Debt or any instrument relating thereto, nor is there any event which, with the passage of time or giving of notice, or both, would result in a default, and no such Company Debt or any instrument or agreement thereto purports to limit the operation of the Company’s business. Complete and

correct copies of all instruments (including all amendments, supplements, waivers and consents) relating to any Company Debt have been provided to Parent. A Note Termination Agreement has been executed and delivered to the Company by each Noteholder (and countersigned and redelivered by the Company), and such Note Termination Agreement constitutes the legal, valid and binding obligation of such Noteholder (and the Company), enforceable against such Noteholder (and the Company) in accordance with its terms.

Section 3.6 Absence of Certain Changes or Events . Since the Balance Sheet Date, (a) there have not been any events, changes, occurrences or circumstances that, individually or in the aggregate, have had or could reasonably be expected to have a Company Material Adverse Effect and (b) there has not occurred any material damage, destruction or loss (whether or not covered by insurance) of any material asset of the Company that adversely affects the use thereof. Since the Balance Sheet Date, the Company has been operated in the Ordinary Course of Business. Without limiting the foregoing, the Company has not taken any action described in Section 5.1 that if taken after the date hereof and prior to the Effective Time would violate such provision.

Section 3.7 Legal Proceedings . Since the Reference Date, there have not been and there are no pending Actions, and there are no Actions threatened in writing, in either case, by or against the Company, its properties or assets or any of the Company's officers or directors in their capacities as such, nor, to the Company's Knowledge, are there any circumstances that would constitute a basis therefor.

Section 3.8 Compliance with Laws; Permits . The Company is and has at all times been, in compliance in all material respects with all Laws applicable to the Company or any of its properties, assets, business or operations, including without limitation, the Health Care Laws. The Company holds all Permits necessary to conduct its business and own, lease and operate its properties and assets and all such Permits are in full force and effect. The Company is and has always been, in compliance in all material respects, with the terms of all Permits necessary to conduct its business and to own, lease and operate its properties and facilities. Schedule 3.8.1 sets forth a list of all Permits that are held by the Company. The Company has not received notice from any Governmental Authority claiming or alleging that the Company was not in compliance with all Laws applicable to the Company or its business or operations; the Company has not been assessed a material penalty with respect to any alleged failure by the Company to have or comply with any Permit.

3.8.1 Neither the Company, nor any of its officers, directors, Employees, Consultants or agents, have, in the operating of the Company's business, engaged in any activities which are prohibited or are cause for material criminal or civil penalties or mandatory or permissive exclusion from Medicare, Medicaid or any other state or federal health care program under 42 U.S.C. §§ 1320a-7, 1320a-7a, 1320a-7b or 1395nn, 5 U.S.C. § 8901 et seq. (the Federal Employees Health Benefits program statute), or the regulations, agency guidance, or similar legal requirement promulgated pursuant to such statutes or any analogous state or local Laws.

3.8.2 Schedule 3.8.2 sets forth all Payment Programs in which the Company has participated at any time since the Reference Date (the “Company Payment Programs”). The Company is a participating supplier or provider, in good standing, in each of the Company Payment Programs in which it currently participates. No civil, administrative, or criminal proceedings relating to Company’s participation in any Payment Program, are pending or, to the Knowledge of Company, threatened, nor has any such proceeding concluded since the Reference Date. Except as set forth in Schedule 3.5.9, no Payment Program is currently requesting or has requested since the Reference Date or, to the Knowledge of Company, is threatening or has since the Reference Date threatened, any recoupment, refund, or set-off from Company except for recoupments, refunds or set-offs in excess of Five Thousand Dollars (\$5,000). No Payment Program has imposed any fine, penalty or other sanction on Company since the Reference Date. The Company has not been suspended, excluded, or otherwise been the subject of adverse action taken by any Payment Program since the Reference Date. The Company has not submitted to any Payment Program since the Reference Date any materially false or fraudulent claims for payment, nor has Company at any time violated any condition of participation, or any other rule, regulation, policy or standard of, any Payment Program.

3.8.3 The Company does not control, direct, require or reward, directly or indirectly, referrals for testing ordered by any Person. To the Knowledge of the Company, the Company does not exercise any ownership, control or governance rights with respect to any Person ordering testing. Neither the Company, nor any of its directors, officers, Employees, Consultants, or agents, has, directly or indirectly given or agreed to give any illegal gift, contribution, payment or similar benefit to any supplier, customer, governmental official or employee or other Person.

3.8.4 All final data that the Company has made available to Parent with respect to historical test utilization, Current Procedural Terminology (“CPT”) codes, payor CPT detail, requisition volumes, rental payments, cash collections, and employees is true, accurate, and complete in all material respects.

3.8.5 Except as set forth Schedule 3.8.5, (i) each Employee and Consultant of the Company required to be licensed by an applicable Governmental Authority, professional body and/or medical body has such licenses, (ii) such licenses are in full force and effect and (iii), to the Knowledge of the Company, there are no facts or circumstances that could reasonably be expected to result in any such licenses being suspended, revoked or otherwise lapse prematurely.

3.8.6 Neither the Company nor any of its Employees, Consultants, other agents, or vendors has been excluded, suspended, debarred or otherwise sanctioned by any Governmental Authority, including the U.S. Department of Health and Human Services Office of Inspector General or the General Services Administration.

3.8.7 The Company is and has at all times been in compliance in all material respects with all applicable Laws relating to the privacy, security, use and disclosure of health information, including “protected health information” or “PHI” as defined under HIPAA and information related to genetic testing and genetic test results, created, used, disclosed or stored in

the course of the operations of the Company, including HIPAA and all applicable state, federal and international laws regarding the privacy and security of health information, including genetic testing and results. The Company has the necessary agreements with all of the Company's "business associates" as such term is defined by and as such agreements are required by HIPAA. True and complete copies of all HIPAA and health information privacy policies that have been used by the Company for the past three years have been provided to Parent and are set forth in Schedule 3.8.7 and such privacy policies are in compliance with all applicable Laws relating to the privacy, security, use and disclosure of health information. The Company has consistently made its "Notice of Privacy Practices" (as defined under HIPAA) available to patients and conspicuously posted its Notice on all websites owned or operated by Company. The Company has at all times complied in all material respects with all rules, policies, and procedures established by the Company from time to time and as applicable with respect to privacy, security, data protection, or the collection and use of health information and genetic testing information created, used, disclosed or stored in the course of the operations of the Company. No actions have been asserted or, to the knowledge of the Company, threatened against the Company by any person alleging a violation of such person's privacy, personal, or confidentiality rights under any such rules, policies, or procedures.

3.8.8 With respect to all health information, PHI, and genetic testing information as described in Section 3.8.7, the Company has taken reasonable steps (including implementing and monitoring compliance with administrative, physical and technical safeguards) to ensure that such information is protected against loss and against unauthorized access, use, modification, disclosure, or other misuse. The Company maintains and has implemented security policies and procedures as required by HIPAA and other applicable laws. Except as set forth in Schedule 3.8.8, at any time during the three-year period preceding the date hereof, there has been no "Breach of Unsecured PHI," as defined under HIPAA, and no "Security Incident" as defined under HIPAA, resulting in the unauthorized use or disclosure of PHI. The Company maintains systems, policies and procedures to respond to incidents and complaints alleging violations of applicable privacy or security standards and to identify and report all Breaches of Unsecured Protected Health Information in accordance with Company's legal and contractual obligations.

Section 3.9 Taxes .

3.9.1 The Company has paid (or accrued for and factored into the calculation of Closing Net Working Capital) all Taxes owed by the Company (without regard to whether or not such Taxes are or were disputed), whether or not shown on any Tax Return. Since the Balance Sheet Date, the Company has incurred no Liability for Taxes arising outside of the Ordinary Course of Business. There are no Liens for Taxes (other than Permitted Liens). The Company is not subject to any currently effective waiver of any statute of limitations in respect of Taxes or agreed to any currently effective extension of time with respect to a Tax assessment or deficiency.

3.9.2 The Company has timely filed all material Tax Returns that are required to have been filed by or with respect to the Company. All such Tax Returns were, when filed, true, correct and complete in all material respects. Except as set forth in Schedule 3.9.2, the

Company is not the beneficiary of any currently effective extension of time within which to file any Tax Return. No written claim has ever been made by any Taxing Authority in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction, which claim has not been finally resolved.

3.9.3 The Company has withheld and paid all Taxes required to have been withheld and paid by it in connection with amounts paid or owing by the Company to any Employee, Consultant, creditor, Stockholder or other third party.

3.9.4 No deficiencies for any Taxes have been proposed or assessed in writing against or with respect to any Taxes due by, or Tax Returns of, the Company, which deficiencies have not been finally resolved, and there is no outstanding audit, assessment, dispute or claim concerning any Tax Liability of the Company either within the Company's Knowledge or claimed, pending or raised by an authority in writing, which audit, assessment, dispute or claim has not been finally resolved.

3.9.5 The Company (A) is not nor has never been a member of an affiliated group (other than a group the common parent of which is Company) filing a consolidated federal income Tax Return and (B) has no Liability for Taxes of any Person arising from the application of Treasury Regulation Section 1.1502-6 or any analogous provision of state, local or foreign Tax Law, or as a transferee or successor, by contract, or otherwise.

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

3.9.7 The Company has disclosed on its federal income Tax Returns all positions taken therein that would reasonably be expected to give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code.

3.9.8 The Company has not made any payments, is not obligated to make any payments and is not a party to any agreement, including this Agreement, that under certain circumstances could obligate it to make any payments that shall not be fully deductible under Section 280G of the Code.

3.9.9 The Company shall not be required to include an item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Date as a result of any: (a) change in method of accounting requested by the Company prior to the Closing; (b) agreement entered into by the Company with any Taxing Authority prior to the Closing; (c) installment sale or open transaction disposition made by the Company prior to the Closing; (d) prepaid amounts received or paid by the Company prior to the Closing; (e) the application by the Company of the long-term method of accounting prior to the Closing; (f) any cancellation of debt income recognized by the Company pursuant to Section 108 of the Code with respect to the Company Promissory Notes or the Senior Debt that is properly allocable to the Pre-Closing Tax Period; or (h) deferral of income under Section 108(i) of the Code as a result of any reacquisition of a debt instrument by the Company occurring prior to the Closing.

3.9.10 The Company has not distributed stock of another Person, nor, to the Company's Knowledge, has its stock been distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code.

3.9.11 The Company does not have nor has it ever had a permanent establishment in any foreign country. The Company does not engage nor has it ever engaged in a trade or business in any foreign country that would cause the Company to be obligated to pay Taxes or file Tax Returns in such country.

3.9.12 Schedule 3.9.12 lists all Tax Returns that have been audited or that currently are the subject of an Action brought by a Taxing Authority. The Company has delivered to Parent correct and complete copies of all federal and state income Tax Returns and all examination reports and statements of deficiencies filed, or assessed against and agreed to, by the Company with respect to Taxes for all taxable periods ending on or after December 31, 2010.

3.9.13 The Company does not own an interest in any Person that is treated as (A) a "controlled foreign corporation" as defined in Section 957 of the Code or (B) a "passive foreign investment company" within the meaning of Section 1297 of the Code.

3.9.14 Schedule 3.9.14 lists all jurisdictions (whether foreign or domestic) in which the Company pays Taxes and the nature of the Taxes paid by the Company.

3.9.15 The Company has not been a party to any "reportable transaction," as defined in Section 6707A(c)(1) of the Code and Treasury Regulation Section 1.6011-4(b) or any similar provision of state, local or foreign Tax Law.

3.9.16 Except as set forth in Schedule 3.9.16, all Taxes (including sales tax, use tax and value-added tax) that were required to be collected or self-assessed by the Company have been duly collected or self-assessed, and all such amounts that were required to be remitted to any Taxing Authority have been duly remitted, and the Company has complied with all reporting requirements with respect thereto.

3.9.17 No power of attorney that has been granted by the Company with respect to any matter relating to the Taxes of the Company is currently in force.

3.9.18 The Company has never (i) made an election under Section 1362 of the Code to be treated as an S corporation for federal income tax purposes or (ii) made a similar election under any comparable provision of any state, local or foreign Tax Law.

3.9.19 The Company has never been a "personal holding company" within the meaning of Section 542 of the Code.

3.9.20 The Company is not and has never have been a party to a transaction or agreement that is in conflict with the Tax rules on transfer pricing in any relevant jurisdiction and all transactions and agreements between or among the Company and any related parties and/or the terms thereof have been conducted in an arm's length manner consistent with the Company's transactions or agreements with unrelated third parties.

Section 3.10 Employee Benefits and Labor Matters .

3.10.1 Plans and Arrangements . Schedule 3.10.1 sets forth a true and complete list of all Company Plans and, with respect to the Severance Plan, a full and complete list of all participants and amounts payable, or that may become payable, to such participants thereunder.

3.10.2 Plan Documents . With respect to each Company Plan, the Company has delivered to Parent a current, accurate and complete copy thereof (including amendments) or a copy of the representative form agreement thereof and, to the extent applicable, true and complete copies of the following documents with respect to each Company Plan: (a) any contracts or agreements, plans and related trust documents, insurance contracts or other funding arrangements, in each case as currently in effect, and all amendments thereto; (b) the results of the non-discrimination testing for the most recent three years; (c) Forms 5500 and all schedules thereto for the most recent three years; (d) the most recent actuarial report, if any; (e) the most recent IRS determination or opinion letter; (f) all correspondence, rulings or opinions issued by the DOL, IRS or any other Governmental Authority and all material correspondence from the Company to the DOL, IRS or other Governmental Authority other than routine reports, returns or other filings within the last three years; (g) the most recent summary plan descriptions and any summaries of material modifications with respect thereto; and (h) written descriptions of all non-written Company Plans.

3.10.3 ERISA . No Company Plan is subject to Title IV of ERISA or is otherwise a Defined Benefit Plan as defined in Section 3(35) of ERISA (a “Title IV Plan”) and neither the Company nor any other entity (whether or not incorporated) that, together with the Company, would be treated as a single employer under Section 414 of the Code or Section 4001 of ERISA (each an “ERISA Affiliate”) has incurred any liability pursuant to Title IV of ERISA that remains unsatisfied. Neither the Company nor any ERISA Affiliate has sponsored, contributed or had an obligation to contribute, to any Title IV Plan, or any money purchase pension plan subject to Section 412 of the Code, within the past six years. No Company Plan is or has been a multiemployer plan within the meaning of Section 3(37) of ERISA (a “Multiemployer Plan”) or a multiple employer welfare arrangement within the meaning of Section 3(40) of ERISA. During the past six years, neither the Company nor any of its ERISA Affiliates has completely or partially withdrawn from any Multiemployer Plan and no termination liability to the United States Pension Benefit Guaranty Corporation or withdrawal liability to any Multiemployer Plan has been or is reasonably expected to be incurred with respect to any Multiemployer Plan by the Company nor any of its ERISA Affiliates. Neither the Company nor any other “disqualified person” or “party in interest,” as defined in Section 4975 of the Code and Section 3(14) of ERISA, respectively, has engaged in any “prohibited transaction,” as defined in Section 4975 of the Code or Section 406 of ERISA (which is not otherwise exempt), with respect to any Company Plan, nor, to the Company’s Knowledge, have there been any fiduciary violations under ERISA that could subject the Company (or any Employee) to any material penalty or tax under Section 502(i) of ERISA or Section 4975 of the Code.

3.10.4 Status of Plans. Company Plans intended to qualify under Section 401 of the Code or other tax-favored treatment under Subchapter B of Chapter 1 of Subtitle A of the Code are so qualified and any trusts intended to be exempt from federal income taxation under the Code are so exempt. Except as set forth at Schedule 3.10.4, no Company Plan intended to qualify under Section 401 of the Code provides for participant plan loans. Nothing has occurred with respect to the operation of any Company Plans that could reasonably be expected to cause the loss of such qualification or exemption, or the imposition of any liability, penalty or Tax under ERISA or the Code. No event has occurred and no condition exists with respect to any Company Plan subject to the requirements of Code Section 401(a) that would subject the Company, either directly or by reason of an ERISA Affiliate of the Company, to any material Tax, fine, Lien, penalty or other liability imposed by ERISA, the Code or other applicable Laws. For each Company Plan with respect to which a Form 5500 has been filed, no material adverse change has occurred with respect to the matters covered by the most recent Form 5500 since the date thereof. Except as set forth at Schedule 3.10.4, none of the Company Plans provides for post-employment life or health coverage for any participant or any beneficiary of a participant, except as may be required under Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code or any similar state law and at the expense of the participant or the participant's beneficiary.

3.10.5 Contributions to Plans. All contributions required to have been made under any of the Company Plans or by Law (without regard to any waivers granted under Section 412 of the Code), have been timely made. There are no unfunded liabilities or benefits under any Company Plans that are not reflected in the Financial Statements.

3.10.6 Conformity with Laws. All Company Plans have been established, operated and maintained in accordance with their terms and with all applicable provisions of ERISA, the Code and other Laws. All amendments and actions required to bring the Company Plans into conformity in all material respects with all of the applicable provisions of the Code, ERISA and other applicable Laws have been made or taken, except to the extent that such amendments or actions are not required by Law to be made or taken until a date after the Effective Time. There are no pending Actions arising from or relating to the Company Plans (other than routine benefit claims), nor does the Company have any Knowledge of facts that could form or could reasonably be expected to form the basis for any such Action. There are no filings or applications pending with respect to the Company Plans with the IRS, the DOL or any other Governmental Authority. The Company has satisfied all obligations applicable to the Company or any ERISA Affiliate under Section 4980B of the Code, Part 6 of Subtitle B of Title I of ERISA and each applicable state law relating to continuation of health or other coverage to any Employee of any ERISA Affiliate (or any dependent or former dependent of such Employee) with respect to any qualifying event that has occurred on or before the Closing Date. Schedule 3.10.6 lists each individual who, as of the date of this Agreement, (i) is currently receiving continuation coverage under COBRA under a Company Plan, or (ii) is within his or her COBRA election period.

3.10.7 Leased Employees. The Company has no Employees who are leased employees and has no liability, contingent or otherwise, for any federal, state or local workers' compensation contribution, with respect to any Employees who are leased employees.

3.10.8 Employment Matters.

(a) Schedule 3.10.8 sets forth a true and complete listing of the Current Employees and the Current Consultants, as of the date hereof, including each such person's name, job title or function and job location, as well as a true, correct and complete listing of his or her current salary or wage payable by the Company, and for each such Current Employee or such Current Consultant, the amount of all incentive compensation paid or payable to such person for the current calendar year, the amount of accrued but unused paid time off, description and amount of any material fringe benefits and each such Current Employee's or such Current Consultant's current status (as to leave or disability status and full time or part time, exempt or nonexempt and temporary or permanent status and as to classification as an employee, consultant, independent contractor, officer or director). Other than as fully reflected or specifically reserved against in accordance with GAAP in the Financial Statements (or as otherwise expressly permitted or required pursuant to this Agreement), neither the Company nor any Holder has paid or promised to pay any bonuses, commissions or incentives to any Employee or Consultant. The Company has delivered to Parent a true and complete copy of the employee handbook for the Company, if any and all other employment policies, if any, currently applicable to any Employee or Consultant.

(b) To the Company's Knowledge, no officer, Current Consultant or Current Employee at the level of manager or higher has disclosed any plans to terminate his, her or their employment or other relationship with the Company.

(c) The Company has a USCIS Form I-9 that is validly and properly completed in accordance with applicable Law for each Employee with respect to whom such form is required by applicable Law. The Company has complied with all Department of Homeland Security, Department of Labor and State Department regulations governing the employment of foreign national workers. The Company has complied with all Laws related to H-1B workers, including the payment of wages and the maintenance of public access files related to the filing of ETA-9035 Labor Condition Applications.

(d) Except as set forth in Schedule 3.10.8(d):

(i) the Company has paid to each applicable Employee the entire amount of the bonus, if any, earned by such Employee for the year ended December 31, 2016 and no remaining bonus amounts for the year ended December 31, 2016, payable to any Employee, remain unpaid as of the Closing Date;

(ii) since the Reference Date, (A) the Company has paid or made provision for payment of all salaries and wages, which are payable by the Company to any Employees, accrued through the Closing Date and is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment, collective bargaining, immigration, wages, hours and benefits, non-discrimination in employment, workers' compensation, including Title VII of the Civil

Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Employment Opportunity Act of 1972, ERISA, the Equal Pay Act, the National Labor Relations Act, the Fair Labor Standards Act, the Americans with Disabilities Act of 1990, the Vietnam Era Veterans Reemployment Act, the Family and Medical Leave Act and any and all similar applicable state and local Laws; and (B) the Company has not been engaged in any unfair employment practice;

(iii) since the Reference Date, the Company has not received a written notice, citation, complaint or charge asserting any violation or liability under the federal Occupational Safety and Health Act of 1970 or any similar applicable Law regulating employee health and safety;

(iv) (A) None of the Current Employees is represented by any labor union or other labor representative with respect to his or her employment with the Company; (B) there are no labor, collective bargaining agreements or similar arrangements binding on the Company with respect to any Current Employees; (C) since the Reference Date, no petition has been filed nor has any proceeding been instituted by any Employee or group of Employees with the National Labor Relations Board or similar Governmental Authority seeking recognition of a collective bargaining agreement; (D) to the Company's Knowledge, there are no Persons attempting to represent or organize or purporting to represent for bargaining purposes any of the Current Employees; (E) since the Reference Date, there has not occurred or, to the Company's Knowledge, has not been threatened any strikes, slowdowns, picketing, work stoppages or concerted refusals to work or other similar labor activities with respect to Employees; and (F) no grievance or arbitration or other proceeding arising out of or under any collective bargaining agreement relating to the Company is pending or, to the Company's Knowledge, threatened;

(v) since the Reference Date, the Company has not received notice of any charge or complaint pending before the Equal Employment Opportunity Commission or similar Governmental Authority alleging unlawful discrimination in employment practices, or before the National Labor Relations Board or similar Governmental Authority alleging any unfair labor practice, by the Company, nor, to the Knowledge of the Company, has any such charge been threatened; and

(vi) (A) all Current Employees of the Company are employed on an at-will basis and their employment can be terminated at any time for any reason without any amounts being owed to such individual other than with respect to wages, compensation and benefits accrued before such termination; and (B) the Company's relationships with all individuals who act as Consultants to the Company can be terminated at any time for any

reason without notice or any amounts being owed to such individual other than with respect to compensation or payments accrued before such termination;

(vii) since the Reference Date, the Company has not effectuated: (A) a “plant closing” (as defined in the WARN Act, or any similar Law) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company; or (B) a “mass layoff” (as defined in the WARN Act, or any similar Law) affecting any site of employment or facility of the Company;

(viii) any individual performing services for the Company who has been classified as an independent contractor, or as an employee of some other entity whose services are leased to the Company, has been correctly classified and is in fact not a common law employee of the Company or any Subsidiary.

3.10.9 Effect of Transaction. Except for the payment of the Merger Consideration under Article II, neither the execution and delivery of the Transaction Agreements by the Company nor the consummation of the Transactions (including the Merger) by the Company, shall result in (a) any payment becoming due to any Employee, (b) the provision of any benefits or other rights to any Employee, (c) the increase, acceleration or provision of any payments, benefits or other rights to any Employee, whether or not any such payment, right or benefit would constitute a “parachute payment” within the meaning of Section 280G of the Code, (d) require any contributions or payments to fund any obligations under any Company Plan, or (e) the forgiveness in whole or in part of any outstanding loans made by the Company to any Person. No amount so disclosed is an “excess parachute payment” within the meaning of Section 280G of the Code.

3.10.10 Compliance with Section 409A of the Code. To the extent that any Company Plan is a “Nonqualified Deferred Compensation Plan,” as such term is defined in Section 409A of the Code, such Company Plan is in documentary and operational compliance with Section 409A of the Code and all applicable guidance issued by the IRS thereunder (or could be made compliant without applicable penalties in accordance with such guidance). No payment pursuant to any Company Plan or other arrangement to any “service provider” (as such term is defined in Section 409A of the Code and the United States Treasury Regulations and IRS guidance thereunder) to the Company would subject any person to tax pursuant to Section 409A(1) of the Code, whether pursuant to the Transactions or otherwise. There is no Contract or arrangement to which the Company, or to the Knowledge of the Company, any Company Affiliate is a party or by which it is bound to compensate any of its current or former employees, independent contractors or directors for additional income or excise taxes paid pursuant to Sections 409A or 4999 of the code.

3.10.11 Plans Outside the United States. No Company Plan is subject to the laws of any jurisdiction other than the United States of America.

3.10.12 Plan Termination. Except as set forth in Schedule 3.10.12, each Company Plan can be amended, terminated or otherwise discontinued in accordance with its terms, without material Liability to the Company, the Surviving Corporation, Parent or any of their Affiliates (other than ordinary administrative expenses typically incurred in a termination event). Except as set forth in Schedule 3.10.12, neither the Company nor any of its Affiliates has announced its intention to modify or amend any Company Plan or adopt any arrangement or program which, once established, would come within the meaning of a Company Plan, and each asset held under such Company Plan may be liquidated or terminated without the imposition of any material redemption fee, surrender charge or comparable Liability.

Section 3.11 Environmental Matters . The Company is and at all times has been, in compliance with all applicable Environmental Laws. There is no Action relating to or arising under Environmental Laws that is pending or, to the Knowledge of the Company, threatened against or affecting the Company or any Real Property or Premises currently or formerly owned, operated or leased by the Company. The Company has not received any notice of, or entered into, or assumed by Contract or operation of Law, any obligation, liability, order, settlement, judgment, injunction or decree relating to or arising under Environmental Laws. To the Knowledge of the Company, there are no facts, circumstances or conditions existing with respect to the Company or any Real Property or Facilities currently or formerly owned, operated or leased by the Company or any property or facility to or at which the Company transported or arranged for the disposal or treatment of Hazardous Materials that could reasonably be expected to result in the Company incurring any Environmental Liability. The Company has not stored, treated, disposed of, arranged for or permitted the disposal of, transported, handled or released any substance (including any Hazardous Materials) or owned, occupied or operated any Premises or property in a manner that has given or could give rise to any material Liabilities (including any Liabilities for response costs, corrective action costs, personal injury, natural resource damages, property damage or any investigative, corrective or remedial obligations) pursuant to CERCLA or any other Environmental Laws. No property or facility now or, to the Knowledge of the Company, previously owned, occupied or operated by the Company, is currently listed or proposed for listing on the National Priorities List or the Comprehensive Environmental Response, Compensation and Liability Information System, both promulgated under CERCLA, or on any analogous state or local registry list and, to the Knowledge of the Company, no off-site location at which the Company has disposed or arranged for the disposal of any waste is listed or proposed to be listed on the National Priorities List or on any analogous state or local list. Schedule 3.11 sets forth a list of environmental reports, audits assessments and investigations in the Company's possession or control which relate to the Premises and the Real Property in the Company's possession or control (the "Environmental Reports"). Except as disclosed in the Environmental Reports, there have been no Releases at any Real Property and there are no above-ground, nor to the Company's Knowledge, underground, storage tanks, oil/water separators, sumps, septic systems, or polychlorinated biphenyls (PCBs) or any PCB-containing equipment located on any Real Property.

Section 3.12 Contracts .

3.12.1 Specified Material Contracts. The Company is not a party to, does not have any obligations, rights or benefits under and none of its assets or properties are bound by:

(a) Except as set forth in Schedule 3.12.1(a), any Contracts that purport to limit, curtail or restrict the ability of the Company or its Affiliates to conduct business in any geographic area or line of business or restrict the Persons with whom the Company or any of its future Subsidiaries or Affiliates may do business;

(b) Except as set forth in Schedule 3.12.1(b), any Contracts: (i) with any Employee and any offer letters for employment or consulting with the Company, that (A) provide for anticipated annual compensation or other payments in excess of \$50,000 for any individual (other than employment offers terminable at will with no severance or acceleration liability), including any Contracts with individuals providing for any commission-based compensation in excess of such amount, (B) provide for the payment of non-qualified deferred compensation subject to Section 409A of the Code, or (C) provide for potential severance payments or other severance benefits; and (ii) with any Consultant and any offer letters to enter into consulting agreements with the Company, that provide for anticipated annual payments in excess of \$50,000 for any individual, including any Contracts with individuals providing for any commission-based payments in excess of such amount;

(c) Except as set forth in Schedule 3.12.1(c), any Contracts with any labor union or other labor representative of Employees (including any collective bargaining agreement);

(d) Except as set forth in Schedule 3.12.1(d), any Contracts with any present or former officer, director or Stockholder of the Company, or any Affiliate of such officer, director or Stockholder (other than employment offers terminable at will with no severance or acceleration liability), including, but not limited to, any agreement providing for the employment of, furnishing of services by, rental of assets from or to, or otherwise requiring payments to, any such officer, director, Stockholder or Affiliate, in each case, other than (i) advances or reimbursements for travel and entertainment expenses consistent with Company policy and practice or (ii) employee benefits generally available to Employees (including stock options);

(e) Except as set forth in Schedule 3.12.1(e), any Contracts under which the Company has advanced or loaned any money to any of the Employees or Affiliates of the Company where there is still an outstanding amount due to the Company under such Contract, other than advances or reimbursements for travel and entertainment expenses consistent with Company policy and past practice;

(f) Except as set forth in Schedule 3.12.1(f), any Contracts granting any power of attorney with respect to the affairs of the Company or otherwise conferring agency or other power or authority to bind the Company other than to officers and attorneys in the Ordinary Course of Business;

(g) Except as set forth in Schedule 3.12.1(g), any partnership or joint venture agreements;

(h) Except as set forth in Schedule 3.12.1(h), Contracts for the acquisition, sale or lease of properties or assets other than in the Ordinary Course of Business;

(i) Except as set forth in Schedule 3.12.1(i), any Contracts with a Governmental Authority;

(j) Except as set forth in Schedule 3.12.1(j), any loan or credit agreements, indentures, notes or other Contracts evidencing indebtedness for borrowed money (contingent or otherwise) by the Company, or any Contracts pursuant to which indebtedness for borrowed money (contingent or otherwise) is guaranteed by the Company, or any guarantees of the foregoing by third parties for the Company's benefit;

(k) Except as set forth in Schedule 3.12.1(k), any mortgages, pledges, security agreements, deeds of trust or other Contracts granting a Lien other than Permitted Lien on any material property or assets of the Company;

(l) Except as set forth in Schedule 3.12.1(l), any financial derivatives master agreements or confirmations, or futures account opening agreements and/or brokerage statements, evidencing financial hedging or similar trading activities, including commodity hedging and long term commodity supply arrangements;

(m) Except as set forth in Schedule 3.12.1(m), any voting agreements or registration rights agreements relating to Company Capital Stock to which the Company is a party;

(n) Except as set forth in Schedule 3.12.1(n), any lease or rental Contracts relating to personal property;

(o) Except as set forth in Schedule 3.12.1(o), any Contracts providing for indemnification by the Company other than (i) customary indemnities against breach of the obligations contained in such Contract that were entered into in the Ordinary Course of Business and (ii) customary indemnities against infringement of Intellectual Property Rights contained in non-exclusive licenses or advertising agreements entered into in the Ordinary Course of Business;

(p) Except as set forth in Schedule 3.12.1(p), any Contract with any supplier or provider of goods or services that are resold by the Company or incorporated into any Product that is sold by the Company to any Person involving consideration in excess of \$10,000 in the current or either of the two previous fiscal years (other than purchase orders for goods entered into in the Ordinary Course of Business);

(q) Except as set forth in Schedule 3.12.1(q), (i) any Contracts to provide Services to any Person involving consideration in excess of \$10,000 in the current or either of the two previous fiscal years, or (ii) perform any service or sell or lease any product which grants the other party or any third party "most favored nation" status, "most favored customer" pricing, preferred pricing, exclusive sales, distribution, marketing or other exclusive rights, or rights of first refusal or rights of first negotiation;

(r) Except as set forth in Schedule 3.12.1(r), any Contract related to the manufacturing, transport, transfer, distribution or storage of any Product involving consideration in excess of \$10,000 in the current or either of the two previous fiscal years;

(s) Except as set forth in Schedule 3.12.1(s), any Contract with any distributor, reseller, sales representative, sales agency or manufacturer's representative or otherwise, providing for the distribution or resale of any Product (other than any Contract with any such Person that is terminable by the Company without cause or penalty upon notice of 30 days or less);

(t) Except as set forth in Schedule 3.12.1(t), any Contract relating to capital expenditures and involving obligations after the date of this Agreement in excess of \$10,000 and not cancelable without penalty;

(u) Except as set forth in Schedule 3.12.1(u), any Contract relating to the disposition or acquisition of material assets or any ownership interest in any entity;

(v) Except as set forth in Schedule 3.12.1(v), any Contract with any Person, including any financial advisor, broker, finder, investment banker or other Person, providing advisory services to the Company in connection with the Transactions;

(w) Except as set forth in Schedule 3.12.1(w), any Contract (other than as set forth above) that is material to the Company's Products, Services or business;

(x) Except as set forth in Schedule 3.12.1(x), any Contract with any vendor that provides services relating to billing, coding and/or reimbursement; and

(y) Except as set forth in Schedule 3.12.1(y), any Contract to enter into or negotiate the entering into of any of the foregoing.

3.12.2 Documentation. The Company has delivered to Parent (a) true and complete copies of each written Material Contract (as defined below) and (b) a summary of each oral Material Contract, together with any and all amendments, supplements and "side letters" thereto.

3.12.3 Status of Material Contracts. Each of the Contracts required to be listed in Schedule 3.12.1, each of the Real Property Leases and each of the IP Contracts (collectively, the "Material Contracts") is valid and binding on the Company and in full force and effect and is enforceable in accordance with its terms by the Company. The Company is not in material breach or default under any Material Contract, nor does any condition exist that, with notice or lapse of time or both, would constitute a breach or default in any respect thereunder by the Company or that would result in material liability to the Company. To the Knowledge of the Company, (a) no other party to any Material Contract is in default thereunder and (b) no condition exists that with notice or lapse of time or both would constitute a default in any material respect by any such other party thereunder. The Company has not received notice of any termination or cancellation of any Material Contract and to the Company's Knowledge, no other party to a Material Contract has plans to terminate or cancel such Material Contract. The

Company has not and, to the Knowledge of the Company, no other party to any Material Contract has repudiated any material provision of any Material Contract. The Company is not disputing and, to the Knowledge of the Company, no other party to such Material Contract is disputing, any material provision of any Material Contract. None of the parties to any Material Contract is renegotiating any material amounts paid or payable to or by the Company under such Material Contract or any other material term or provision thereof.

Section 3.13 Assets: Title, Sufficiency, Condition . The Company has good, valid and sufficient title to or sole and exclusive leasehold interest in or adequate right to use all of its assets whether real or personal, tangible or intangible, including those that are used in the conduct of its business, located on its premises or reflected in the Interim Balance Sheet as being owned by the Company or acquired after the date thereof (other than inventory disposed of in the Ordinary Course of Business since the date of the Interim Balance Sheet) (the “Assets”), free and clear of all Liens except Permitted Liens. The Assets constitute, in all material respects, all of the assets, properties and rights of every type and description that are used in and necessary for the conduct of the Company’s business as currently conducted. All of the material fixtures and other material improvements to the Real Property (defined in Section 3.14 below) and all of the tangible personal property other than the inventory (i) are in all material respects adequate and suitable for their present uses, (ii) in good working order, operating condition and state of repair (ordinary wear and tear excepted) and (iii) have been maintained in all respects in accordance with normal industry practice.

Section 3.14 Real Property .

3.14.1 Schedule 3.14.1 sets forth a list of the addresses of all real property (i) owned by the Company (the “Owned Real Property”), (ii) previously owned by the Company or any of its predecessors, (iii) leased, subleased or licensed by or for which a right to use or occupy has been granted to the Company (the “Leased Property” and together with the Owned Real Property, the “Real Property”). Schedule 3.14.1 also identifies (i) with respect to each previously owned real property, the Company or predecessor that was the owner of such real property and (ii) with respect to each Leased Real Property, each lease, sublease, license or other Contract under which such Leased Real Property is occupied or used, including the date of and legal name of each of the parties to such lease, sublease, license or other Contract and each amendment, modification, supplement or restatement thereto (the “Real Property Leases”).

3.14.2 If the Company currently owns any Owned Real Property, the Company has good and clear, record and marketable fee simple title in and to such Owned Real Property, free and clear of all Liens other than Permitted Liens.

3.14.3 There are no written or oral leases, subleases, licenses, concessions, occupancy agreements or other Contracts granting to any other Person the right to use or occupancy of any of the Real Property and there is no Person (other than the Company) in possession of any of the Real Property. With respect to each Real Property Lease that is a sublease, to the Company’s Knowledge, the representations and warranties in this Section 3.14 and Section 3.12.3 are true and correct with respect to the underlying lease.

3.14.4 The Company has delivered to Parent true, accurate and complete copies of the Real Property Leases, in each case as amended or otherwise modified and in effect, together with any extension notices and other material correspondence, lease summaries, notices or memoranda of lease, estoppel certificates and subordination, non-disturbance and attornment agreements related thereto and no Real Property Lease has been modified in any material respect, except to the extent that such modifications are disclosed by the copies delivered to Parent prior to Closing. With respect to each of the Real Property Leases, (i) the Company has a valid and enforceable leasehold interest in each parcel or tract of real property leased by it, free and clear of all Liens (including liens arising out of any attachment, judgement or execution) affecting the Leased Real Property or the estate or interest created by the Real Property Leases except for the Permitted Liens; (ii) there are no existing defaults thereunder by the Company or any other party to the Real Property Leases; (iii) no event has occurred which (with notice, lapse of time or both) would constitute a breach or default thereunder by the Company or any other party to the Real Property Leases, or that could permit the termination, modification, or acceleration of rent thereunder; (iv) there are no pending disputes, actions or proceedings that were brought by the Company against a lessor under a Real Property Lease alleging that such lessor is in default or has committed a breach under such Real Property Lease; (iv) the Company has not received any notice from any Governmental Authority of a violation of any governmental requirements (including Environmental Laws) with respect to any of the Leased Real Property and to the Company's Knowledge, the Leased Real Property is not in violation of any material requirements of same; and (v) the Company has not used, generated, stored, released, discharged, transported, handled, or disposed of any hazardous materials on, in or in connection with any parcel of Leased Real Property except as expressly permitted pursuant to the terms of the Real Property Leases.

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

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

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

Section 3.15 Intellectual Property; Technology; Privacy and Security; Information Systems; Disaster Recovery .

3.15.1 Company IP .

(a) The Company owns or has the right to use all Company Technology and all Intellectual Property Rights therein for all purposes necessary or useful to the Company's business as presently conducted and as presently contemplated to be conducted. Except for: (i) the Technology and Intellectual Property Rights licensed to the Company under the Inbound IP Contracts identified on Schedule 3.15.4 and to the extent provided in such Inbound IP Contracts; and (ii) off the shelf, "click wrap" or "shrink wrap" license agreements for software that is generally commercially available to the public on reasonable terms (" Shrink Wrap Licenses"), with annual, aggregate payments (including license, maintenance and support fees) not in excess of \$10,000 individually or \$10,000 in the aggregate and to the extent provided in such licenses, none of the Company Technology or Company Intellectual Property Rights is owned by any third party. The Company exclusively owns all Company Technology and all Company Intellectual Property Rights that are owned or purported to be owned by the Company free and clear of all Liens other than with respect to the Senior Debt, Permitted Liens and any Outbound IP Contracts listed on Schedule 3.15.4, including Proprietary Software.

(b) Schedule 3.15.1(b) contains a list and description of Proprietary Software. Except as disclosed by Schedule 3.15.1(b) (i) Proprietary Software is not subject to any transfer, assignment, change of control, site, equipment, or other operational limitations; (ii) the Company has maintained and protected all Proprietary Software (including all source code and system specifications) with appropriate proprietary notices (including the notice of copyright in accordance with the requirements of 17 U.S.C. § 401), confidentiality and non-disclosure agreements and such other measures as are reasonably necessary to protect the Intellectual Property Rights contained therein or relating thereto, and none of the source code of any Proprietary Software has been published, disclosed or delivered to any Person by Company or any employee, consultant, contractor or agent of the Company; (iii) no licenses or rights (including contingent rights) have been granted by the Company, or any of its Affiliates, to any Person to access, use or distribute any source code of any Proprietary Software; (iv) all Proprietary Software has been registered or is eligible for protection and registration under applicable copyright law; (v) the Company has copies of all releases or separate versions of all Proprietary Software so that the same may be subject to registration in the United States Copyright Office; (vi) the Company has complete and exclusive right, title and interest in and to all Proprietary Software; (vii) the Company has developed the Proprietary Software through its own efforts and for its own account without the aid or use of any consultants, agents, independent contractors or Persons (other than Persons that are employees of Seller); (viii) the Proprietary Software includes the source code, system documentation, statements of principles of operation and schematics, as well as any pertinent commentary, explanation, program (including compilers), workbenches, tools and higher level (or "proprietary") language used for the development, maintenance, and implementation thereof, so that a trained computer programmer could develop, maintain, support, compile and deploy all releases or separate versions of the same; the Source Code Materials for the Proprietary Software are complete and accurate; (ix) there are no Contracts in effect with respect to the marketing, distribution, licensing of the

Proprietary Software by any other Person; (x) the Proprietary Software complies in all material respects with all applicable laws relating to the export or re-export of the same; and (xi) the Proprietary Software may be exported or re-exported to all countries without the necessity of any license, other than to those countries specified as prohibited destinations pursuant to applicable regulations of the U.S. Department of Commerce and/or the United States State Department.

3.15.2 Infringement. To the Company's Knowledge, neither (i) the operation of the business of the Company and its predecessors, including as presently conducted and as presently contemplated to be conducted, nor (ii) any of the Products or Company Technology (including current and proposed) has infringed upon, diluted, misappropriated or violated, or is alleged to infringe upon, dilute, misappropriate or violate, any Intellectual Property Rights of any Person. Neither the Company nor any of its predecessors has (x) received any written charge, complaint, claim, demand, or notice alleging infringement, dilution, misappropriation or violation of the Intellectual Property Rights of any Person (including any demand to refrain from using or to license any Intellectual Property Rights of any Person in connection with the conduct of the business) or (y) agreed to, or has a contractual obligation to, indemnify any Person for or against any interference, infringement, dilution, misappropriation or violation with respect to any Intellectual Property Rights. To the Company's Knowledge, no Person has infringed upon, diluted, misappropriated or violated any Company Intellectual Property Rights at any time during the three-year period preceding the date hereof. There are no pending or, to the Company's Knowledge, threatened claims against the Company or any facts or circumstances supporting a claim challenging the Company's ownership of the Company Intellectual Property Rights or alleging that any of the Company Intellectual Property Rights are invalid or unenforceable.

3.15.3 Scheduled IP. Schedule 3.15.3 identifies all patents, patent applications, registered trademarks and copyrights, applications for trademark and copyright registrations, domain names, registered design rights and other forms of registered Intellectual Property Rights and applications therefor owned by or exclusively licensed to the Company (collectively, the "Company Registrations"). Except as set forth in Schedule 3.15.3, all Company Registrations have been duly maintained (including the payment of fees) and are not expired, cancelled or abandoned. Schedule 3.15.3 also identifies each trade name, each unregistered trademark, service mark, or trade dress and each unregistered copyright owned or exclusively licensed by the Company that, in each case, is material to the business of the Company.

3.15.4 IP Contracts. Schedule 3.15.4 identifies under separate headings each Contract under which the Company uses or licenses Company Technology or Company Intellectual Property Rights that are material to the operation of the business of the Company as presently conducted and as presently contemplated to be conducted and that any Person besides the Company owns, including Software other than Proprietary Software that is licensed to or used by the Company or any of its Affiliates and is related to Company's business ("Third Party Software") (other than Shrink Wrap Licenses) (collectively "Inbound IP Contracts") or under which the Company has granted any Person any right or interest in Company Intellectual Property Rights including any right to use or access any item of the Company Technology (the "Outbound IP Contracts", and together with the Inbound IP Contracts, the "IP Contracts"). None of the Inbound IP Contracts or Shrink Wrap Licenses are subject to any transfer, assignment,

change of control, site, equipment, or other operational limitations. Except as provided in the Inbound IP Contracts and Shrink Wrap Licenses, the Company does not owe any royalties or other payments or otherwise have any liability to any Person for the use of any Intellectual Property Rights or Technology. The Company has paid all fees, royalties and other payments applicable to the past and current use or exploitation intellectual property provided for by the Inbound IP Contracts and Shrink Wrap Licenses, and no fees, royalties or other payments provided by the Inbound IP Contracts and Shrink Wrap Licenses are due or otherwise required to be paid by the Company or any of its Affiliates within thirty (30) days following the Closing Date or otherwise due as a result of, or attributable to, the Transactions contemplated herein (including without limitation the Merger).

3.15.5 Confidentiality and Invention Assignments. The Company has maintained practices designed to ensure the protection of the confidentiality of the Company's confidential information and trade secrets and has required any Employee, Consultant or third party with access, or to whom it has disclosed its confidential information, to execute contracts requiring them to maintain the confidentiality of such information and use such information only in accordance with such contracts. All Employees and Consultants of the Company who (i) in the normal course of their duties are involved in the creation of Company Technology that is incorporated in any product or service of the Company or (ii) have in fact created any Company Technology that is incorporated in any product or service of the Company, have executed contracts that irrevocably assign to the Company on a worldwide royalty-free basis all of such Persons' respective rights, including Intellectual Property Rights relating to such product or service. To the Knowledge of the Company, no Employee or Consultant is in violation of any term of any such agreement, including any patent disclosure agreement or other employment contract or any other contract or agreement relating to the relationship of any such Employee or Consultant with the Company. All authors of any works of authorship in the Company Technology have waived their moral rights and have agreed to a covenant not to assert their moral rights, in each case, to the extent permitted by applicable law or such authors prepared such works in jurisdictions that do not recognize moral rights.

3.15.6 Open Source Software. Except as disclosed on Schedule 3.15.6, none of the Company Technology, Proprietary Software, or any product or service of the Company (including any software, middleware, firmware) constitutes, contains, or is dependent upon any Public Software. The software disclosed on Schedule 3.15.6 has never been provided, delivered or distributed to any Person other than those Employees and Consultants of the Company working on the development of Company's software, firmware or middleware for the benefit of Company and has never been delivered or distributed in any form (object code, executable code or source code form) to any Person, including delivery via electronic transmission, by physical delivery on tangible media (either as stand-alone software or as a part of any other software), loan, delivery or transmission as part of the transfer of hardware or components, or any other form of delivery or distribution, temporary or permanent. None of the Company Technology, Proprietary Software, nor any product or service of the Company is subject to any IP Contract or other contractual obligation that would require the Company to publicly divulge any source code or trade secret that is part of the Company Technology.

3.15.7 Privacy and Data Security.

(a) Except as set forth on Schedule 3.15.7, the use and dissemination by the Company of any Personal Data (as defined below) is in compliance in all material respects with the Company's privacy policies and terms of use, industry standards, all applicable Information Privacy and Security Laws, Personal Data Obligations, and all Contracts to which the Company is bound. No Personal Data is stored or otherwise maintained outside the United States by the Company or any third party. To the extent that the Company has engaged in cross-border processing of Personal Data, it has taken all required steps to ensure an adequate level of protection for the Personal Data, including registration with the relevant data protection authorities to the extent registration is required by applicable Law. True and complete copies of all privacy policies that have been used by the Company in the past three years have been provided to Parent. The Company has consistently posted a privacy policy in a clear and conspicuous location on all websites and any mobile applications owned or operated by the Company.

(b) The Company does not Collect or Use Personal Data from any Person in any manner other than as described in the Contracts and privacy policies delivered to Parent.

(c) The Company maintains policies and procedures regarding data security and privacy and maintains administrative, technical and physical safeguards that are commercially reasonable and, in any event, in compliance with industry standards, all applicable Information and Privacy and Security Laws and all Contracts to which the Company is bound. True and complete copies of all such policies and procedures have been provided to Parent. The Company has complied at all times in all material respects with the terms of all Contracts to which the Company is a party relating to data privacy, security or breach notification (including provisions that impose conditions or restrictions on the collection, use, disclosure, transmission, destruction, maintenance, storage, or safeguarding of Personal Data).

(d) Except as set forth on Schedule 3.15.7(d), at any time during the three-year period preceding the date hereof, there have been no security breaches relating to, or violations of any security policy or Information Privacy and Security Law regarding, or any unauthorized access disclosure, or use of, any data or information used by the Company, including Personal Data. No notice has been provided to the Company by a third party vendor or any other person of any security breach relating to Personal Data. The Company has not experienced a loss or unauthorized disclosure, use, or breach of privacy or security of any Personal Data in the custody or control of the Company that would have required notice to any third Person (including any Governmental Entity or parties to any Contract) under any applicable Law. Except as set forth on Schedule 3.15.7(d), no Person (including any Governmental Authority) has commenced any Action relating to the Company's information privacy or data security practices, or to the Knowledge of the Company, threatened any such Action or made any complaint, investigation, or inquiry relating to such practices.

(e) There has been no loss of or unauthorized access, disclosure, use, or breach of privacy or security involving any Cardholder Data Collected or Used by or on behalf of the Company.

(f) The Company does not (i) have or solicit any customers in the European Economic Area, or (ii) knowingly process, transmit, or store any Personal Data of any Persons located in the European Economic Area.

(g) The Company has taken all required steps to limit access to Personal Data to: (i) those Company personnel and third-party vendors providing services to or on behalf of the Company who have a need to know such Personal Data in the execution of their duties to the Company; and (ii) such other Persons permitted to access such Personal Data in accordance with the privacy policies and terms of use, industry standards, all applicable Information Privacy and Security Laws and all Contracts to which the Company is bound.

(h) The Company maintains a written technical information security program that contains administrative, technical and physical safeguards (including encryption) compliant in all material respects with industry standards and applicable Information Privacy and Security Laws, including but not limited to the Massachusetts Standards for Protection of Personal Information of Residents of the Commonwealth (201 C.F.R. 17.00, et seq.) (the “Security Program”). The Company’s Security Program is designed to: (i) protect the integrity and confidentiality of Personal Data; (ii) protect against reasonably anticipated threats or hazards to the security of Personal Data; (iii) protect against the unauthorized access, disclosure or use of Personal Data; (iv) address computer and network security; and (v) provide for the secure destruction and disposal of Personal Data. The Security Program has been updated as required by all applicable Information Privacy and Security Laws. All third-party vendors or persons with access to Personal Data have entered into contracts or written agreements with the Company requiring that such vendors or persons maintain a substantially similar security program.

(i) The Company is in material compliance with all applicable Information Privacy and Security Laws regarding the Collection and Use of the Personal Data of any individual.

(j) The Company controls the access to its computer and information technology networks through the utilization of industry-standard or better security measures that are designed to prevent unauthorized access to such networks. All of the Company’s security measures are designed to be materially consistent with or exceed industry standards and the requirements of applicable Laws and are designed to (A) prevent the unauthorized disclosure of confidential information (including Personal Data) of the Company’s customers, (B) prevent access without express authorization (and immediately terminate such unauthorized access) to the networks and information system of the Company’s customers through the networks of the Company and (C) facilitate the Company’s identification of the person making or attempting to make such unauthorized access.

3.15.8 Effect of Transactions on Company Technology Rights or Data Privacy. The Transactions (including the Merger) shall not adversely affect the Company's ownership of any Company Technology or the Company's legal right and ability to continue using the Company Technology in the operation of the Company's business on or after the Effective Time to the same extent as the Company Technology is used or proposed to be used in the operation of the business prior to the Effective Time. The Transactions (including the Merger) (including any transfer of Personal Data resulting from the Transactions) (i) comply with all Personal Data Obligations of the Company, and (ii) comply (and the disclosure to, transfer to, and use by the Parent of such Personal Data after the Closing will comply) with all Information Privacy and Security Laws (including any such Laws and regulations in the jurisdictions where the Personal Data is collected). Following the Effective Time, the Surviving Corporation shall continue to have the right to use such Personal Data on identical terms and conditions as the Company enjoyed immediately prior to the Effective Time.

3.15.9 Information Systems. The Company owns, leases or licenses all Information Systems that are used in, or necessary for, the business of the Company, including the capacity and ability to process current peak volumes in a timely manner. The Information Systems are in good working condition, comply with all service level requirements of related Contracts and are adequate and have sufficient capacity for the conduct of the Company's business as currently conducted. The Information Systems consist of appropriate infrastructure and capacity to scale up the Company's business in a foreseeable manner as needed for the conduct of the business as presently conducted and as presently contemplated to be conducted, and there are no restrictions in Contracts relating to the Information Systems that could materially restrict or impair such scaling up. Schedule 3.15.9 contains a list and description of each Contract that contains a service level commitment Company has made to any third party, Company maintains in place appropriate policies, procedures and operational controls to enable Company to satisfy such service level commitments, and there has been no violation of any such service level commitment in the last three (3) years. In the last twelve months, there have been no material failures, breakdowns, outages or unavailability of such Information Systems and the DR Plans were not activated other than for testing purposes. On and after the Effective Time, the Information Systems shall be in the possession, custody or control of the Surviving Corporation, along with all tools, documentation and other materials relating thereto, as existing immediately prior to the Effective Time.

3.15.10 Disaster Recovery. The Company has delivered to Parent a true and complete copy of the Company's DR Plans. To the Knowledge of the Company, the DR Plans are consistent with or exceed industry standards and applicable Laws. The DR Plans are designed to ensure, at a minimum, the ability of the Company to resume operations and performance of services promptly and ensure redundancy of all data and information material to the operation of the Company that the Company is required to maintain pursuant to any Contract, internal policy or applicable Law. The Company has conducted testing of the DR Plans not less frequently than annually (and in any event, upon a material change to the DR Plans) and corrected any material deficiencies in the DR Plans or deficiencies in compliance of the Company with the DR Plans.

Section 3.16 Insurance. Schedule 3.16 sets forth a list of all policies of property, general liability, directors and officers, fiduciary, employment, title, workers' compensation, environmental, product liability, cyber liability and other forms of insurance maintained by the Company and all pending outstanding claims against such insurance policies. The Company has delivered to Parent complete and correct copies of all such policies, together with all endorsements, riders and amendments thereto. There are no disputes with the insurers of any such policies or any claims pending under such policies as to which coverage has been reserved, questioned, denied or disputed by the insurers of such policies. Each such policy is in full force and effect, all premiums that are due and payable under all such policies have been paid and the Company is otherwise in compliance in all material respects with the terms of such policies. The Company has not failed to give proper notice of any claim under any such policy in a valid and timely fashion. The Company has not received any notice of non-renewal, cancellation or termination of any insurance policy in effect on the date hereof or within the past five years.

Section 3.17 Related Party/Affiliate Transactions. There are no Liabilities of the Company to any Related Party other than ordinary course, Employee- and director-related compensation and reimbursement Liabilities. No Related Party has any interest in any property (real, personal or mixed, tangible or intangible) used by the Company in the conduct of its business. The Company is not subject to any ongoing transactions pursuant to which the Company purchases any services, products, or Technology from, or sells or furnishes any services, products or Technology to, any Related Party. All transactions pursuant to which any Related Party has purchased any services, products, or Technology from, or sold or furnished any services, products or technology to, the Company (each a "Related Party Transaction") have been on an arms-length basis on terms no less favorable to the Company than would be available from an unaffiliated party.

Section 3.18 Customers, Payors and Suppliers. Schedule 3.18 sets forth true and complete lists of the top ten customers, payor and suppliers of the Company (measured in terms of total revenues (for customers and payors) or total expenses (for suppliers)) attributable to each such Person (a) during the year ended December 31, 2015, (b) during the year ended December 31, 2016, and (c) during the six-month period ended June 30, 2017 (each Person identified on at least one of such lists, a "Top Customer, Payor or Supplier"), showing the total sales by the Company to each such customer, total amounts reimbursed by each payor and the total purchases by the Company from each such supplier, during such period. Since the Balance Sheet Date, no Top Customer, Payor or Supplier has (x) ceased or materially reduced its purchases from or sales or provision of services to the Company or changed the pricing or other terms of the business it does with the Company, or (y) to the Knowledge of the Company threatened to cease or materially reduce such purchases, reimbursement or sales or provision of services, other than in the Ordinary Course of Business. No Top Customer, Payor or Supplier has pending or to the Company's Knowledge, has any basis to threaten, any Action against the Company.

Section 3.19 Product Warranties. Schedule 3.19 includes correct and complete copies of the standard terms and conditions of the sale for the Company (containing applicable guaranty, warranty and indemnity provisions). Except as set forth in Schedule 3.19,

3.19.1 all Products manufactured, sold or delivered by the Company during the past three years have been in conformity in all material respects with all applicable contractual commitments and all express and implied warranties;

3.19.2 no Products manufactured, sold or delivered by the Company are subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of such sale other than any immaterial deviations from the applicable standard terms and conditions in the Ordinary Course of Business;

3.19.3 the Company has not been notified during the past three years of any claims for and to the Company's Knowledge, there are no threatened claims for any extraordinary product returns, warranty obligations or product services relating to any of its Products or services; and

3.19.4 there have been no product recalls, withdrawals or seizures by any Governmental Authority with respect to any Products manufactured, sold or delivered by the Company during the past three years.

Section 3.20 Disclaimer of Warranties. Except for the representations and warranties contained in this ARTICLE III, neither the Company nor any other Person on behalf of the Company makes any other express or implied representation or warranty with respect to the Company or with respect to any other information provided to Parent and the Company disclaims any other representations or warranties, whether made by the Company or any of its Affiliates, officers, directors, employees, agents or representatives.

Section 3.21 Certain Business Practices. Neither the Company nor any Employee or agent, acting on behalf of the Company, has (a) used any funds for unlawful contributions, gifts, entertainment or other unlawful payments relating to political activity, (b) made any unlawful payment to any foreign or domestic government official or employee or to any foreign or domestic political party or campaign or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, (c) consummated any transaction, made any payment, entered into any Contract or arrangement or taken any other action in violation of Section 1128B(b) of the Social Security Act, as amended or (d) made any other unlawful payment of a type similar to those described above in this Section 3.21.

Section 3.22 Brokers and Other Advisors. Except as set forth on Schedule 3.22, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses, in connection with the Transactions (including the Merger) or any prior merger, acquisition or divestiture transaction based upon arrangements made by or on behalf of the Company or any of its Affiliates (any such fees, commissions and reimbursement expenses, the "Broker Fees"). Notwithstanding anything in this Agreement to the contrary, there are no fees or expenses related to the Transactions (including the Merger) payable by the Company to any third party other than the Company Transaction and Bonus Expenses.

ARTICLE IV: REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub jointly and severally represent and warrant to the Company as follows:

Section 4.1 Organization, Standing and Corporate Power. Each of Parent and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the Laws of the jurisdiction in which it is incorporated.

Section 4.2 Authority; Noncontravention .

4.2.1 Power; Enforceability. Each of Parent and Merger Sub has all requisite corporate power and corporate authority to execute and deliver the Transaction Agreements to which it is a party and to perform its obligations thereunder and to consummate the Transactions (including the Merger). The execution, delivery and performance by each of Parent and Merger Sub of the Transaction Agreements to which it is a party and the consummation by Parent and Merger Sub of the Transactions (including the Merger), have been duly authorized and approved by their respective Boards of Directors (and prior to the Effective Time shall be adopted by Parent as the sole Stockholder of Merger Sub) and no other corporate action on the part of Parent or Merger Sub is necessary to authorize the execution, delivery and performance by Parent and Merger Sub of the Transaction Agreements to which it is a party and the consummation by it of the Transactions (including the Merger). This Agreement has been and, when delivered at the Closing, the other Transaction Agreements to which Parent or Merger Sub is a party shall be, duly executed and delivered by Parent and Merger Sub. Assuming due authorization, execution and delivery hereof by the other parties hereto and thereto, this Agreement constitutes and the other Transaction Agreements to which Parent or Merger Sub is a party shall, when delivered at the Closing, constitute, the legal, valid and binding obligations of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with their respective terms, except to the extent that their enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

4.2.2 No Violations. Neither the execution and delivery of the Transaction Agreements to which Parent or Merger Sub is a party, nor the consummation by Parent or Merger Sub of the Transactions (including the Merger), nor compliance by Parent and Merger Sub with any of the terms or provisions thereof, shall (a) violate any provision of the Charter Documents of Parent or Merger Sub or (b) assuming that the consents and approvals referred to in Section 4.3 are obtained and the filings referred to in Section 4.3 are made, (i) violate any Law applicable to Parent or Merger Sub or any of their respective properties or assets, or (ii) constitute a default under, result in the termination of or cancellation under, or result in the creation of any Lien upon any of the respective properties or assets of, Parent or Merger Sub under, any of the terms, conditions or provisions of any material Contract to which Parent or Merger Sub is a party, except for such violations, losses, defaults, terminations, cancellations, accelerations or Liens as, individually or in the aggregate, would not reasonably be expected to prevent or materially delay or materially impair the ability of Parent or Merger Sub to consummate the Merger, (a “Parent Material Adverse Effect”).

Section 4.3 Governmental Approvals. Except for (a) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL and (b) filings required under and compliance with other applicable requirements of, any Antitrust Laws and foreign antitrust Laws (in each case, if required), no consents or approvals of, or filings, declarations or registrations with, any Governmental Authority are necessary for the execution and delivery of this Agreement by Parent and Merger Sub or the consummation by Parent and Merger Sub of the Transactions (including the Merger), other than such other consents, approvals, filings, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

Section 4.4 Ownership and Operations of Merger Sub. Parent is the record owner of all of the outstanding capital stock of Merger Sub. Merger Sub was formed solely for the purpose of engaging in the Transactions, has engaged in no other business activities and has conducted its operations only as contemplated hereby.

ARTICLE V: ADDITIONAL COVENANTS AND AGREEMENTS

Section 5.1 Conduct of Business.

Except as expressly permitted by this Agreement, or with the prior written consent of Parent, in its sole discretion or as required by applicable Law, from the date of this Agreement until the Effective Time or the earlier termination of this Agreement pursuant to ARTICLE VII (Termination), the Company shall (a) conduct its business in in the Ordinary Course of Business and in compliance with all applicable Laws, (b) use commercially reasonable efforts to maintain and preserve intact its present business organization and the goodwill of those having business relationships with it (including by using commercially reasonable efforts to maintain the value of its assets and technology and preserve its relationships with Employees, customers, suppliers, distributors, strategic partners, licensors, licensees, regulators, landlords and others having business relationships with the Company) and retain the services of its present officers, directors and Employees and (c) maintain in full force and effect all insurance policies described in Section 3.16. Without limiting the generality of the foregoing, except as set forth in Schedule 5.1, until the Effective Time, the Company shall not:

5.1.1 issue, sell, grant, dispose of, amend any term of, grant registration rights with respect to, pledge or otherwise encumber any shares of its capital stock or other equity interests, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of its capital stock or other equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any shares of its capital stock or other equity interests or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for, any shares of its capital stock or other equity interests; *provided, however*, that the Company may issue shares of Company Common Stock upon the conversion of outstanding shares of Company Preferred Stock or the exercise of Company Options or Warrants that are outstanding on the date of this Agreement and in accordance with the terms thereof;

5.1.2 amend (including by reducing an exercise price or extending a term) or waive any of its rights under, or accelerate the vesting under, any provision of the Company Option Plan or any agreement evidencing any outstanding stock option, warrant or other right to acquire capital stock of the Company or any restricted stock purchase agreement or any similar or related contract;

5.1.3 redeem, purchase or otherwise acquire or cancel any of its outstanding shares of capital stock or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to acquire any shares of its capital stock or equity interests;

5.1.4 declare, set aside funds for the payment of or pay any dividend on, or make any other distribution (whether in cash, stock or property) in respect of, any shares of its capital stock or other equity interests or make any payments to the Stockholders in their capacity as such;

5.1.5 split, combine, subdivide, reclassify or take any similar action with respect to any shares of the Company's capital stock;

5.1.6 form any Subsidiary;

5.1.7 incur, guarantee, issue, sell, repurchase, prepay or assume any (a) Company Debt, or issue or sell any options, warrants, calls or other rights to acquire any debt securities of the Company (*provided, however*, that the foregoing shall not prohibit the Company from incurring additional bridge debt prior to the Closing on terms substantially identical to the Convertible Notes; *provided, further*, that prior to any such incurrence of additional bridge debt, (i) any additional Person who enters into a convertible note with the Company (i.e., any Person who is not a Noteholder as of the date hereof) shall sign a counterpart signature page to this Agreement and thereafter shall be deemed a "Noteholder" for all purposes hereunder, (ii) any such Person shall sign a Note Termination Agreement, and (iii) all existing Noteholders shall consent in writing to a revised allocation of the consideration payable to the Noteholders hereunder); (b) obligations of the Company issued or assumed as the deferred purchase price of property; (c) conditional sale obligations of the Company; (d) obligations of the Company under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business); (e) obligations of the Company for the reimbursement of any obligor on any letter of credit; and (f) obligations of the type referred to in clauses (a) through (e) of other Persons for the payment of which the Company is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations;

5.1.8 sell, transfer, lease, license, mortgage, encumber or otherwise dispose of or subject to any Lien (including pursuant to a sale-leaseback transaction or an asset securitization transaction), any of its properties or assets, except sales of inventory or non-exclusive licenses of assets in the Ordinary Course of Business;

5.1.9 make any capital expenditure;

5.1.10 acquire or agree to acquire in any manner (whether by merger or consolidation, the purchase of an equity interest in or a material portion of the assets of or otherwise) any business or any corporation, partnership, association or other business organization or division thereof other than the acquisition of inventory and equipment in the Ordinary Course of Business;

5.1.11 make any investment (by contribution to capital, property transfers, purchase of securities or otherwise) in, or loan or advance funds to any Person (other than travel and similar advances to its Employees in the Ordinary Course of Business in an aggregate amount at any one time of not more than \$2,500);

5.1.12 with respect to Contracts, (a) enter into, adopt, terminate, modify, renew or amend (including by accelerating material rights or benefits under) any Material Contract, (b) enter into or extend the term or scope of any Contract that purports to restrict the Company, or any current or future Subsidiary of the Company, from engaging in any line of business or in any geographic area, (c) enter into any Contract that could be breached by, or require the consent of any third party in order to continue in full force following consummation of the Transactions (including the Merger), or (d) release any Person from, or modify or waive any material provision of, any confidentiality or non-disclosure agreement;

5.1.13 (a) hire or terminate any employees, (b) increase the annual level of compensation payable or to become payable by the Company to any of its directors or Current Employees, (c) grant any bonus, benefit or other direct or indirect compensation to any director, Current Employee or Current Consultant other than in the Ordinary Course of Business, (d) increase the coverage or benefits available under or otherwise modify or amend or terminate any (or create any new) Company Plan, except as required by applicable Law or by the terms of any Company Plan, (e) enter into any employment, deferred compensation, severance, consulting, non-competition or similar agreement to which the Company is a party (or amend any such agreement in any material respect) or enter into any agreement involving a Current Employee or Current Consultant, except, in each case, as required by applicable Law from time to time in effect or by the terms of any Company Plan or (f) enter into any Related Party Transaction;

5.1.14 make, change or revoke any material election concerning Taxes or Tax Returns, file any amended Tax Return or any Tax Return inconsistent with past practice, enter into any closing agreement or Contract with any Taxing Authority with respect to Taxes, settle any Tax claim or assessment (other than by paying Taxes in the Ordinary Course of Business), surrender any right to claim a refund of Taxes, request any Tax ruling or agree to an extension or waiver of the statute of limitations with respect to the assessment or determination of Taxes;

5.1.15 make any changes in financial or tax accounting methods, principles or practices (or change an annual accounting period), except as required by applicable Law;

5.1.16 amend the Company Charter Documents;

5.1.17 adopt a plan or agreement for or carry out any complete or partial liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization other than as required by the provisions of the Transaction Agreements;

5.1.18 pay, repurchase, prepay, discharge, settle or satisfy any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) in excess of \$5,000 in any one instance or \$10,000 in the aggregate, other than the payment, discharge, settlement or satisfaction in accordance with the terms of the Liabilities reflected in the Balance Sheet;

5.1.19 initiate, settle, agree to settle, waive or compromise any Action;

5.1.20 accelerate, beyond the normal collection cycle, collection of accounts receivable or delay beyond normal payment terms payment of any accounts payable;

5.1.21 accelerate or defer the construction of any Premises;

5.1.22 accelerate or defer the purchase of fixtures, equipment, leasehold improvements, or other capital expenditures;

5.1.23 grant or agree to grant any perpetual license to any of the Company's Intellectual Property Rights;

5.1.24 hire, appoint or, except as required by the terms of this Agreement, terminate any director or officer of the Company;

5.1.25 enter into any lease (either as lessor or lessee) or other form of use or occupancy agreement for the use or occupancy of any real property or amend, in any respect, or terminate any of the Real Property Leases; or

5.1.26 agree to take any of the foregoing actions.

Nothing contained in this Agreement shall give Parent or Merger Sub, directly or indirectly, rights to control any operations of the Company prior to the Effective Time.

Section 5.2 Stockholder Approval; Preferred Stock Conversion. As promptly as practicable (and in any event within ten (10) days) after the execution of this Agreement, the Company shall, in accordance with its Charter Documents and applicable Law, provide to its stockholders an Information Statement and other appropriate documents in connection with the obtaining of written consents of the Stockholders in favor of the adoption of this Agreement and the transactions contemplated by this Agreement (including the Preferred Stock Conversion). The Information Statement shall include the unanimous recommendation of the board of directors of the Company in favor of the adoption of this Agreement and the transactions contemplated by this Agreement (including the Merger and the Preferred Stock Conversion). Notwithstanding anything to the contrary contained in this Agreement, the Information Statement and any other materials submitted to the Stockholders in connection with the transactions contemplated by this Agreement shall be subject to prior review and reasonable

approval by Parent. The Company shall use commercially reasonable efforts to obtain such written consents from all holders of the outstanding shares of Company Capital Stock; provided, however, that the Company shall, pursuant to the Support Agreements, obtain written consents from (i) at least 95% of the Company Common Stock (after giving effect to the Preferred Stock Conversion), (ii) all of the outstanding Series A Preferred Stock before the Preferred Stock Conversion and (iii) all of the outstanding Series B Preferred Stock before the Preferred Stock Conversion. In addition to obtaining the consent of each holder of Company Preferred Stock for the purpose of effecting the Preferred Stock Conversion, the Company shall take all other actions necessary to effect the Preferred Stock Conversion prior to the Effective Time.

Section 5.3 Commercially Reasonable Efforts.

5.3.1 Actions Required to Consummate Transactions. Subject to the terms and conditions of this Agreement, from the date of this Agreement until the Closing Date or the earlier termination of this Agreement pursuant to ARTICLE VII (Termination), each of the Parties shall use (and shall cause its Affiliates to use) commercially reasonable efforts to promptly (a) take, or cause to be taken, all actions and do, or cause to be done, all things, necessary, proper or advisable to cause the conditions to closing of the other Parties hereunder to be satisfied and to consummate and make effective the Transactions (including the Merger), in each case, as expeditiously as practicable (including preparing and fully filing within five (5) Business Days after the date hereof all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions, applications and other documents) and (b) obtain all approvals, consents, registrations, Permits, authorizations and other confirmations from any Governmental Authority or third party necessary, proper or advisable to consummate the Transactions (including the Merger).

5.3.2 Governmental Authorities. Each of the Parties shall use its commercially reasonable efforts to (a) cooperate with each other in connection with any investigation or other inquiry by or before a Governmental Authority relating to the Transactions (including the Merger), including any proceeding initiated by a private party and (b) keep the other Parties informed in all material respects and on a reasonably timely basis of any material communication received by such Party from, or given by such Party to, any Governmental Authority and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the Transactions. In furtherance and not in limitation of the covenants of the Parties contained in this Section 5.3, each of the Parties shall use its commercially reasonable efforts to resolve such objections, if any, as may be asserted by a Governmental Authority or other Person with respect to the Transactions (including the Merger).

5.3.3 Contractual Consents. The Company shall obtain all consents, waivers and approvals of any parties to any Contracts set forth on Schedule 3.4 as are required thereunder in connection with the Merger or for any such Contracts to remain in full force and effect, so as to preserve all material rights of and material benefits to, the Company under such Contracts from and after the Effective Time (the “Required Consents”). Such consents, waivers and approvals shall be in a form reasonably acceptable to Parent.

Section 5.4 Public Announcements. Unless otherwise required by (a) applicable Law, (b) stock exchange requirements, or (c) any disclosure made in connection with the enforcement of any right or remedy relating to this Agreement or the transactions contemplated hereunder, no Party to this Agreement other than Parent shall at any time make any public announcement or disclosure in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other Parties (which consent shall not be unreasonably withheld or delayed).

Section 5.5 Access to Information.

5.5.1 Access. Subject to the requirements of applicable Law, the Company shall afford to Parent and Parent's Representatives, from time to time prior to the earlier of (i) the Effective Time or (ii) the termination of the Agreement pursuant to Section 7.1, access during normal business hours upon reasonable advance notice to (a) all of the Company's Facilities, books, reports, Contracts, assets, filings with and applications to Governmental Authorities, records and correspondence (in each case, whether in physical or electronic form) and (b) to the Representatives of the Company as Parent may reasonably request and the Company shall furnish promptly to Parent all information and documents concerning its business, financial condition and operations, properties and personnel related to the consummation of the Merger or the ownership or operation of the Company's business as Parent may reasonably request and Parent shall be allowed to make copies of such information and documents.

5.5.2 Updated Financials. Promptly, but in no event later than 10 calendar days after the end of each month from the date hereof until the Closing Date, the Company shall provide Parent with a copy of the true and correct unaudited balance sheets and related statements of income and cash flows of the Company as of and for the period ended the most-recent month-end prepared using the Company's books and records and in accordance with GAAP consistently applied, together with a copy of the standard monthly reporting package provided to the Company's management.

Section 5.6 Confidentiality. The Noteholders, Management Carveout Plan Participants and the Holders' Representative on behalf of the other Holders each acknowledge that the success of the Surviving Corporation after the Closing Date depends upon the preservation of the confidentiality of the Confidential Information (as hereinafter defined), that the preservation of the confidentiality of the Confidential Information is an essential premise of the bargain between the Parties and Parent and Merger Sub would be unwilling to enter into this Agreement in the absence of this Section 5.6. Accordingly, the Noteholders, Management Carveout Plan Participants and the Holders' Representative on behalf of the other Holders each shall, and shall use its commercially reasonable efforts to cause its Affiliates and their respective Representatives to, keep confidential all confidential documents and information involving or relating to the Company or its business (the "Confidential Information"), unless (a) compelled to disclose by Law so long as, to the extent permitted by Law, reasonable prior notice of such disclosure is given to Parent and the Company and a reasonable opportunity is afforded Parent and the Company to contest the same or (b) disclosed in an Action brought by a Party in pursuit of its rights or in the exercise of its remedies hereby. "Confidential Information" does not

include any document or information which (i) is as of the Closing Date or becomes following the Closing Date generally available to the public other than as a result of a disclosure in violation of this Section 5.6 by the receiving party or its Representatives or (ii) becomes available following the Closing Date to the receiving party on a non-confidential basis from a person not known by the receiving party to be under an obligation not to transmit the information to the receiving party. The provisions of this Section 5.6 shall survive the Closing Date indefinitely. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Noteholders, the Management Carveout Plan Participants, the Holders' Representative and their respective Affiliates (except for the Company and its Subsidiaries) may provide general information about the subject matter of this Agreement to their direct, indirect and potential investors in connection with their normal fund raising, marketing, informational or reporting activities.

Section 5.7 Notification of Certain Matters. The Company shall provide prompt written notice to Parent upon becoming aware (a) that any representation or warranty made by such Party in this Agreement was, when made or subsequently has become untrue, (b) of any failure by such Party to comply with or satisfy any of its covenants or agreements hereunder, (c) of the occurrence or nonoccurrence of any event that could reasonably be expected to cause any condition precedent to any obligation of any Party to consummate the Transactions (including the Merger) not to be satisfied at or prior to the Closing Date, (d) of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions (including the Merger), to the extent such consent is not already contemplated by this Agreement or the Schedules thereto, (e) of any notice or other communication from any Governmental Authority in connection with the Transactions (including the Merger), (f) of the commencement or threat of commencement of any Action regarding the Transactions (including the Merger) or otherwise relating to the Company or its business, or (g) of any other material development affecting the assets, Liabilities, business, financial condition or operations of the Company; *provided, however*, that neither the delivery of any notice pursuant to this Section 5.7 nor obtaining any information or knowledge in any investigation pursuant to Section 5.5 or otherwise shall (i) cure any breach of, or non-compliance with, any representation or warranty requiring disclosure of such matter, or any breach of any other provision of this Agreement, (ii) amend or supplement any scheduled disclosure made by the Company in ARTICLE III or (iii) limit the remedies available to the Party receiving, or entitled to receive, such notice, including remedies pursuant to ARTICLE II (Merger), ARTICLE VI (Conditions Precedent), ARTICLE VII (Termination), ARTICLE VIII (Indemnification) or ARTICLE IX (Misc.).

Section 5.8 Tax Matters. For purposes of this Section 5.8, all references to the Company include any predecessor entity of the Company.

5.8.1 Noteholder-Prepared Tax Returns. The Company shall, at the Company's expense, prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Company for all taxable periods ending on or before the Closing Date and which are due on or before the Closing Date and the Company shall pay or cause to be paid all Taxes shown as due on such Tax Returns. All Tax Returns referred to in the first sentence of this Section 5.8.1 shall be prepared in accordance with the past practices of the Company, to the extent permitted

by applicable Law. Not less than 15 Business Days prior to the due date (after applicable extensions) of any Tax Return described in the first sentence of this Section 5.8.1, the Company shall submit such Tax Return for Parent's review and comment. The Company shall incorporate Parent's comments with respect to such Tax Returns (unless unreasonable).

5.8.2 Parent-Prepared Tax Returns.

(a) Parent shall prepare or cause to be prepared and file or cause to be filed all Tax Returns of the Company (i) for taxable periods that end after the Closing Date, including all Tax Returns for all complete taxable periods including but not ending on the Closing Date (collectively, the "Straddle Periods"), and (ii) for taxable periods ending on or before the Closing Date and which are due after the Closing Date. Parent shall cause the Surviving Corporation to pay all Taxes shown as due on such Tax Returns. Parent shall permit Holders' Representative a reasonable period of time, but not less than 15 Business Days, to review and comment, prior to filing, on each Tax Return for a Straddle Period or that is described in clause (ii) of the first sentence of this Section 5.8.2(a). Parent and the Surviving Corporation shall consider in good faith any changes to such Tax Returns that are reasonably requested by Holders' Representative with respect to Taxes for which the Noteholders and Management Carveout Plan Participants would bear liability pursuant to this Agreement. The Noteholders and the Management Carveout Plan Participants shall reimburse Parent in accordance with the provisions of ARTICLE XIII for any Pre-Closing Taxes due with respect to such Tax Returns, including as determined pursuant to Section 5.8.2(b).

(b) In the case of any Straddle Period, the amount of Taxes allocable to the portion of the Straddle Period ending on the Closing Date shall be determined as follows: (i) in the case of Taxes imposed on a periodic basis (such as real or personal property Taxes), the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction, the numerator of which is the number of calendar days in the Straddle Period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire relevant Straddle Period; and (ii) in the case of Taxes not described in clause (i) above (such as franchise Taxes, Taxes that are based upon or related to income or receipts, based upon occupancy or imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible)), the amount of any such Taxes shall be determined as if such taxable period ended as of the close of business on the Closing Date.

5.8.3 Tax Contests.

(a) After the Closing, each of Parent, on the one hand, and Holders' Representative, on the other hand, shall promptly notify the other Party in writing upon receipt from a Taxing Authority of any written notice of any pending or threatened audit, examination, claim, dispute or controversy relating to Taxes (a "Tax Claim") with respect to the Company for a Pre-Closing Tax Period or any Losses for which such other Party (or any of its Affiliates) could be liable pursuant to this Agreement; provided, however, the failure to give such notice shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party has been materially prejudiced as a result of such failure.

(b) With respect to any Tax Claim relating to Taxes or Tax Returns within the scope of Section 5.8.1, or any income Taxes or income Tax Returns within the scope of clause (ii) of the first sentence of Section 5.8.2(a), the Noteholders and Management Carveout Plan Participants shall, through the Holders' Representative, solely at the Noteholders' and Management Carveout Plan Participants' own cost and expense, control all proceedings in connection with such Tax Claim (including selection of counsel); provided, however, that to the extent that any such Tax Claim could reasonably be expected to result in Parent, its Affiliates or the Surviving Corporation being liable for any additional Taxes hereunder, the Holders' Representative (on behalf of the Noteholders and the Management Carveout Plan Participants) (i) shall keep Parent fully informed regarding such Tax Claim, and (ii) shall not settle such Tax Claim without the written consent of Parent, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) With respect to any Tax Claim relating to Taxes or Tax Returns within the scope of Section 5.8.2(a) (other than any Tax Claim described in Section 5.8.3(b)), Parent shall, solely at Parent's own cost and expense, control all proceedings in connection with such Tax Claim (including selection of counsel); provided, however, that to the extent that any such Tax Claim could reasonably be expected to result in the Noteholders or Management Carveout Plan Participants being liable for any additional Taxes hereunder, (i) Parent shall keep Holders' Representative fully informed regarding such Tax Claim, (ii) Holders' Representative and its counsel (at the Noteholders' and Management Carveout Plan Participants' expense) may participate in (but not control the conduct of) the defense of such Tax Claim, and (iii) Parent shall not settle such Tax Claim without the written consent of Holders' Representative, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) Any dispute, controversy or claim between Parent and Holders' Representative with respect to the defense of any Tax Claim, as described in this Section 5.8.3, shall be resolved pursuant to Section 5.8.9.

5.8.4 Certification. Parent and Holders' Representative agree, upon request from the other Party, to use their commercially reasonable efforts to obtain any certificate or other document from any Taxing Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the contemplated Transactions (including the Merger)).

5.8.5 Tax Sharing Agreements. The Company shall terminate all tax allocation agreements or tax sharing agreements with respect to the Company as of the Closing Date and shall ensure that such agreements are of no further force or effect on and after the Closing Date and that there shall be no further liabilities or obligations imposed on any of the Company under any such agreements.

5.8.6 Cooperation. Following the Closing Date, Parent, the Surviving Corporation and the Holders' Representative shall, as reasonably requested by any Party: (a) assist any other Party in preparing and filing any Tax Returns relating to the Company that such other Party is responsible for preparing and filing; (b) cooperate in preparing for any Tax audit of, or dispute with any Taxing Authority regarding and any judicial or administrative proceeding

relating to, liability for Taxes, in the preparation or conduct of litigation or investigation of claims and in connection with the preparation of financial statements or other documents to be filed with any Taxing Authority, in each case with respect to the Company; (c) make available to the other Parties and to any Taxing Authority as reasonably requested all information, records and documents relating to Taxes relating to the Company (at the cost and expense of the requesting Party); (d) provide timely notice to the other Parties in writing of any pending or threatened Tax audits or assessments relating to the Company for taxable periods for which any such other Party is responsible; and (e) furnish the other Parties with copies of all correspondence received from any Taxing Authority in connection with any Tax audit or information request with respect to any taxable periods (or portion thereof) for which any such other Party is responsible. For the avoidance of doubt, the cooperation noted in this Section 5.8.6 shall include signing any Tax Returns, amended Tax Returns, claims or other documents with respect to any audit, litigation or other proceedings with respect to Taxes, the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

5.8.7 No Section 338 Tax Election; Other Tax Covenants. Neither Parent nor its Affiliates shall make a Tax election under Section 338 of the Code or any similar election under state, local or foreign Tax Law with respect to the Merger. Parent will not cause or permit the Surviving Corporation to take any action from the Closing until the end of the Effective Date other than in the Ordinary Course of Business to the extent that such action could result in any increased Tax liability or reduction of any Tax asset of the Company in respect of any Pre-Closing Tax Period without the prior written consent of the Holders' Representative (which consent shall not be unreasonably withheld, conditioned or delayed).

5.8.8 Amended Tax Returns. Parent shall not cause or permit the Surviving Corporation or any Affiliate of Parent to amend any Tax Return of or with respect to the Company that relates to Taxes that are subject to indemnification by the Noteholders and Management Carveout Plan Participants hereunder without the prior written consent of Holders' Representative (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that no such consent shall be required for an amendment of any Tax Return to be consistent with applicable Tax Law.

5.8.9 Transfer Taxes. The Noteholders and Management Carveout Plan Participants, on the one hand, and Parent, on the other hand, each shall be liable for one-half of any real property transfer or gains tax, stamp tax, stock transfer tax, or other similar Tax imposed as a result of or in connection with the Merger, including with respect to the Company Promissory Notes and the Senior Debt (collectively, the "Transfer Taxes"), and any penalties or interest with respect to the Transfer Taxes. The parties shall cooperate in filing all necessary Tax Returns and other documentation with respect to the Transfer Taxes.

5.8.10 Dispute Resolution for Taxes. With respect to any dispute, controversy or claim relating to Taxes between Parent and the Noteholders, Management Carveout Plan Participants or the Company (prior to the Closing), or between Parent and the Noteholders and

Management Carveout Plan Participants (for any Tax for which an indemnity claim may exist under this Agreement), Parent and the Noteholders and Management Carveout Plan Participants, or the Company, as applicable, shall cooperate in good faith to resolve such dispute, controversy or claim between them for a period of thirty (30) days from the date written notice of such dispute, controversy or claim is received by Parent or Holders' Representative, as the case may be; but if the applicable parties are unable to resolve such dispute, controversy or claim, the parties shall submit the dispute, controversy or claim for resolution, which resolution shall be final, conclusive and binding on the parties, to a mutually agreed upon national accounting firm or a mutually agreed upon tax lawyer who is a partner in a law firm, that, in each case, is: (a) familiar with transactions or operations of the sort at issue; and (b) independent with respect to each Party. Notwithstanding anything in this Agreement to the contrary, the fees and expenses of the mutually agreed upon firm or person, as described in the preceding sentence, relating to any dispute as to the amount of Taxes owed shall be paid by Parent, on the one hand, and the Noteholders and Management Carveout Plan Participants, on the other hand, in proportion to each Party's respective liability for the portion of Taxes in dispute, as determined by such mutually agreed upon firm or person.

Section 5.9 Employment/Consulting Agreements. The Company acknowledges that Nicole Castro Faulkner has executed and delivered to Parent an employment agreement and Marc Jones has executed and delivered to Parent a consulting agreement, each substantially in the forms attached hereto as Exhibit H-1 and Exhibit H-2, respectively, which agreements shall become binding and effective as of the Closing Date (collectively, the "Employment/Consulting Agreements").

Section 5.10 Officers and Directors Insurance. Prior to the Closing Date, the Company shall obtain a prepaid extended reporting period or tail policy insuring the current and former officers or directors of the Company under the current program of directors' and officers' liability insurance maintained by the Company which shall be effective commencing with the Closing Date and ending six years thereafter and which shall afford coverage for actual or alleged acts or omissions occurring at, during or prior to the Closing Date including with respect to the Transactions (including the Merger) (the "D&O Tail Insurance"). The Company shall bear the cost of such insurance coverage and such costs which, to the extent not paid prior to the Closing Date, shall be included in the determination of the Company Transaction and Bonus Expenses and paid by Parent pursuant to Section 2.9.1(b).

Section 5.11 Employee Matters.

5.11.1 Continuing Employees. Nothing in this Agreement shall give rise to any obligation by Parent to retain any Current Employee, any group of Current Employees of the Company or any Company Plan following the Closing Date. Continuing Employees who become eligible to participate in any welfare benefit plan or pension plan (intended to qualify under Section 401(a) of the Code) of Parent (each a "Parent Plan") shall receive credit for purposes of eligibility and vesting for years of service with the Company prior to the Effective Time to the extent that such service was recognized under the corresponding Company Plan prior to the Effective Time; *provided* that such service shall not be recognized if and to the extent that it would result in the duplication of benefits or is not possible or practical under a Parent Plan.

For clarity, service credit shall not be given for benefit accrual, early retirement subsidies or entitlement purposes under any Parent Plan and shall not be given for any purpose under any Parent plans or programs other than welfare benefit plans or pension plans, including any equity plans, but excluding any personal time off plans and vacation programs.

5.11.2 Company Plans. Parent reserves the right to request that the Company cease contributions to and/or terminate one of more of the Company Plans effective immediately prior to Closing. Any such cessation or termination may only be undertaken (i) in accordance with the governing documents and Contracts for the Company Plans (including through plan amendment) and (ii) if such cessation or termination conforms with applicable Laws.

5.11.3 No Third-Party Beneficiaries. This Section 5.11 is not intended to amend any benefit plans or arrangements of Parent or any of its Subsidiaries, to limit the ability of Parent or any of its Subsidiaries to amend, modify or terminate any of such benefit plans or arrangements or to confer third-party beneficiary rights on any Person who is not a Party to this Agreement.

Section 5.12 No Negotiations, Etc. The Company shall not and shall cause the Holders and their respective Representatives not to, directly or indirectly solicit, initiate, or enter into any discussions or negotiations or continue in any way any discussions or negotiations with any Person or group of Persons regarding any Competing Transaction (defined below). The Company shall promptly but not later than 48 hours of the occurrence of the relevant event notify Parent orally and in writing if any inquiries, proposals, or requests for information concerning a Competing Transaction are received by the Company, the Holders or any of their respective Representatives. The written notice shall include the identity of the Person making such inquiry, proposal, or request and the terms and conditions thereof as well as a copy of such inquiry proposal or request. For purposes of this Section 5.12, “Competing Transaction” means a transaction or a series of related transactions (other than the Transactions, including the Merger) involving (i) any sale of stock or other equity interests in the Company, (ii) a merger, consolidation, share exchange, business combination, or other similar transaction involving the Company, (iii) any sale, lease, exchange, license (other than in the Ordinary Course of Business), mortgage, pledge, transfer, or other disposition of the assets of the Company (other than disposition of inventory in the Ordinary Course of Business), including the so-called MIPS Pediatrics (including Family EXOME and Autism/Development Delay), PGS or carrier screening-related assets or businesses, or (iv) any other transaction or series of transactions which could reasonably preclude the consummation of the Transactions (including the Merger).

Section 5.13 Termination of the Company Option Plan. The Company shall take (or cause to be taken) all actions necessary or appropriate to terminate the Company Option Plan (as well as all Company Options and Company Warrants), effective as of the Effective Time.

Section 5.14 MIPS. Parent (on behalf of itself and its Affiliates, including the Surviving Corporation) acknowledges and agrees that: (i) at any time before the Hold-Back Payment Date, the Holders’ Representative may effect a sale (a “MIPS Sale”) of those assets and Intellectual Property Rights in existence as of immediately prior to the Closing Date which relate solely and exclusively to the Company’s molecular inversion probe target capture technology

(the “MIPS Assets”); and (ii) Parent will provide reasonable cooperation and assistance in connection with effecting a MIPS Sale, including (a) facilitating due diligence investigations and (b) executing and delivering such agreements, instruments and other documents as are necessary to sell the MIPS Assets. Notwithstanding any provision herein to the contrary, (x) Parent shall have sole discretion to reject any MIPS Sale if Parent determines that there are any Liabilities (whether actual, potential, contingent or otherwise) of any amount or nature whatsoever that could be payable or borne by Parent or its Affiliates (including the Surviving Corporation), or for which Parent or its Affiliates (including the Surviving Corporation) could otherwise have any Liability, in connection with the MIPS Assets or as a result of any such MIPS Sale, (y) as a condition to the consummation of any MIPS Sale, Parent and its Affiliates (including the Surviving Corporation), as well as their assignees and sublicensees (without restriction), shall retain an irrevocable and royalty-free license to use (including to research, develop, manufacture, sell and import) the MIPS Assets for all purposes, and, (z) without limiting any other remedies of the Parent Indemnified Persons, the Parent Indemnified Persons may exercise the Offset Right (without any time limitations) against any Noteholder MIPS Proceeds. The proceeds (whether in the form of up-front payments, contingent payments, fees or otherwise) from a MIPS Sale, after deducting the sum of all Taxes and expenses incurred by Parent and its Affiliates in connection with the MIPS Sale plus the amount of \$1,400,000 which shall remain with Parent (such net amount, the “Noteholder MIPS Proceeds”), shall be payable to the Noteholders and the Management Carveout Plan Participants, in each case in accordance with the Note Termination Agreements and Management Carveout Plan, as applicable, and the Noteholders and Carveout Plan Allocation Schedule; provided, however, that any delivery of Noteholder MIPS Proceeds to any Noteholder or Management Carveout Plan Participant shall be subject to the payment by such Noteholder or Management Carveout Plan Participant of such amounts as are required to be deducted or withheld from such consideration under the Code or under any other applicable Tax Law as well as the delivery of any reasonably appropriate Tax forms, including Form W-9 (or the appropriate Form W-8, as applicable). Without limitation, the Company, the Noteholders and the Management Carveout Plan Participants acknowledge and agree that neither Parent nor any of its Affiliates shall have any Liability for any of the MIPS Assets, including with respect to the maintenance and prosecution of any Intellectual Property Rights included within the MIPS Assets, and that the Noteholders and Management Carveout Plan Participants should look solely to themselves or the Holders’ Representative in this regard.

ARTICLE VI: CONDITIONS TO CLOSING

Section 6.1 Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Transactions (including the Merger) are subject to the satisfaction (or waiver by Parent) at or prior to the Closing of the following conditions:

6.1.1 Representations and Warranties. (a) Each of the representations and warranties of the Company contained in Section 3.1 (Organizational Matters), Section 3.2 (Authority; Noncontravention; Voting Requirements) and Section 3.3 (Capitalization) and each of the representations and warranties of the Noteholders contained in the Note Termination Agreements and the Management Carveout Plan Participants in the Management Carveout Plan Participant Agreements shall be true and correct in all respects on and as of the Closing Date with the same force and effect as if made on the Closing Date, except for those representations

and warranties which address matters only as of a particular date (which representations were so true and correct as of such particular date); and (b) all other representations and warranties of the Company contained in Article III of this Agreement 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 (with respect solely to this clause (b)) (i) in each case, or in the aggregate, where the failure to be true and correct would not have a Company Material Adverse Effect (provided that all “Company Material Adverse Effect” qualifications and other materiality qualifications limiting the scope of the representations and warranties of the Company in Article III of this Agreement will be disregarded), or (ii) for those representations and warranties which address matters only as of a particular date (which representations were so true and correct, subject to the qualifications as set forth in the preceding clause (i), as of such particular date).

6.1.2 Performance of Obligations of Company. The Company shall have performed in all material respects all covenants, agreements and obligations required to be performed by it under this Agreement at or prior to the Closing; *provided, that*, with respect to any such covenants agreements or obligations which are subject to materiality, Material Adverse Effect, substantial compliance or similar materiality qualifications, the Company shall have performed such covenants, agreements and obligations in all respects.

6.1.3 No Litigation. No Action shall have been instituted, commenced or threatened and no Action shall remain pending that seeks to or could reasonably be expected to (a) restrain, prevent, enjoin, prohibit or make illegal the Transactions (including the Merger), (b) cause any of the Transactions (including the Merger) to be rescinded following the Closing Date or (c) impose limitations on the ability of the Surviving Corporation to effectively conduct its business following the Closing Date or (d) compel Parent or the Company to dispose of any portion of the Company’s business or assets.

6.1.4 Employment/Consulting Agreements. The Employment/Consulting Agreements described in Section 5.9 shall have been executed and delivered to Parent at or prior to the execution of this Agreement and no such Employment/Consulting Agreement shall have been amended, terminated, cancelled or repudiated.

6.1.5 Resignation of Officers and Directors. Parent shall have received resignations, in form and substance reasonably satisfactory to Parent, effective as of the Effective Date from each officer and director of the Company, other than those continuing officers and directors specified to the Company by Parent in writing at least two Business Days prior to the Closing Date.

6.1.6 Delivery of Closing Certificates. Parent shall have received:

(a) Secretary’s Certificate. A certificate dated as of the Closing Date, signed by the Secretary of the Company, certifying (i) the continued effectiveness of the Company Charter Documents, (ii) the names and incumbency of each of the officers of the Company executing this Agreement and each of the other Transaction Agreements, (iii) the valid adoption of resolutions of the Board of Directors of the Company approving this Agreement and the consummation of the Transactions (including the Merger) and (iv) that the Holders have adopted and approved this Agreement and the transactions contemplated hereby;

(b) Closing Certificate. A certificate dated as of the Closing Date, signed by the Chief Executive Officer or the Chief Financial Officer of the Company certifying that the conditions precedent set forth in Section 6.1.1, Section 6.1.2, Section 6.1.3, Section 6.1.8, Section 6.1.9, Section 6.1.10, Section 6.1.12, Section 6.1.14, Section 6.1.16, and Section 6.1.17 have been met;

(c) Allocation Schedule Certificate. A certificate dated as of the Closing Date, signed by the Chief Executive Officer or the Chief Financial Officer of the Company certifying that the Allocation Schedule is true and correct in all respects;

(d) Good Standing Certificates. Certificates of good standing with respect to the Company issued by the Company's jurisdiction of organization, dated not more than five (5) Business Days prior to the Closing Date;

(e) FIRPTA Certificate. A certificate dated as of the Closing Date, signed by the Chief Executive Officer or Chief Financial Officer of the Company conforming to the requirements of Treasury Regulation Sections 1.897-2(h) and 1.1445-2(c)(3); and

(f) Certificate of Merger. The Certificate of Merger, duly executed by the Company.

6.1.7 Release of Liens. Other than from the Noteholders with respect to the Company Promissory Notes (which will be addressed by the Note Termination Agreements), Parent shall have received payoff letters, in form and substance reasonably satisfactory to Parent, from each lender to the Company evidencing the aggregate amount of Company Debt outstanding as of the Closing Date and an agreement that, if such aggregate amount is paid to such lender on the Closing Date, such indebtedness shall be repaid in full and that all Liens of the Company shall be released forthwith.

6.1.8 Transaction Expenses. Parent shall have received written statements from the Company's outside legal counsel and any financial advisor, accountant or other Person who provided services to the Company (other than Employees who provided such services only in their capacities as such), or who is otherwise entitled to any compensation from the Company, in connection with services provided with respect to this Agreement or any of the Transactions, setting forth the total amount of unpaid Company Transaction and Bonus Expenses that remain payable to such Person with respect to services rendered through the Closing Date.

6.1.9 No Material Adverse Effect. Since the Interim Balance Sheet Date, no Company Material Adverse Effect shall have occurred.

6.1.10 280G Stockholder Approval or Disapproval. With respect to any payments and/or benefits that may constitute "parachute payments" under Section 280G of the Code with respect to any Employees, the Company shall have submitted such parachute payments to the Stockholders for approval and the Stockholders shall have (a) approved,

pursuant to the method provided for in the regulations promulgated under Section 280G of the Code, any such “parachute payments” or (b) shall have voted upon and disapproved such “parachute payments,” and, as a consequence, such “parachute payments” shall not be paid or provided for in accordance with applicable Law.

6.1.11 Note Termination Agreements and Management Carveout Plan Participant Agreements. The Company shall have delivered to Parent (i) the Note Termination Agreements duly executed by all Noteholders and the Company and (ii) the Management Carveout Plan Participant Agreements duly executed by all Management Carveout Plan Participants and the Company.

6.1.12 No Injunctions or Restraints. No Order shall be in effect (a) enjoining, restraining, preventing or prohibiting consummation of the Transactions (including the Merger), (b) causing any of the Transactions (including the Merger) to be rescinded following the Closing Date, (c) imposing limitations on the ability of the Surviving Corporation to effectively conduct its business following the Closing Date or (d) compelling Parent or the Company to dispose of any portion of the Company’s business or assets.

6.1.13 Governmental Consents. All filings with and consents of any Governmental Authority required to be made or obtained in connection with the Merger and the other transactions contemplated by this Agreement shall have been made or obtained and shall be in full force and effect and any waiting period under any applicable antitrust or competition law, regulation or other Law shall have expired or been terminated.

6.1.14 Required Consents. The Company shall have obtained and delivered to Parent all Required Consents.

6.1.15 Exchange Agent Agreement. The Exchange Agent Agreement shall have been executed and delivered by the Exchange Agent to Parent at or prior to the execution of this Agreement and shall not have been amended, terminated, cancelled or repudiated.

6.1.16 Preferred Stock Conversion. The Preferred Stock Conversion shall have been effected.

6.1.17 Stockholder Approval. The adoption of this Agreement shall have been duly approved by the Requisite Stockholder Approval. The number of shares of Company Capital Stock that constitute (or that are or may be eligible to become) Dissenting Shares shall be less than five percent (5%) of the Company Common Stock (after giving effect to the Preferred Stock Conversion), and no shares of Company Common Stock issued upon the conversion of the Company Preferred Stock (i.e., pursuant to the Preferred Stock Conversion) shall constitute (or be eligible to become) Dissenting Shares.

6.1.18 No Company Options or Warrants. The Company shall have provided Parent with evidence reasonably satisfactory to Parent as to the termination of (i) the Company Option Plan, (ii) all outstanding Company Options and (iii) all outstanding Company Warrants.

6.1.19 Credit Facility Waiver or Consent. Parent shall have received any consent, amendment or waiver required pursuant to the terms of that certain Loan and Security Agreement dated as of March 15, 2017 between Oxford Capital, LLC and Parent (as it may be amended from time to time) such that none of the Merger or the other transactions contemplated by this Agreement shall cause or represent a breach of event of default thereunder.

6.1.20 Noteholder and Management Carveout Plan Participant Tax Forms. The Company shall have delivered to Parent a Form W-9 (Request for Taxpayer Identification Number and Certification) or a Form W-8, as applicable, executed by each Noteholder and Management Carveout Plan Participant.

Section 6.2 Conditions to Obligation of the Company. The obligation of the Company to effect the Transactions (including the Merger) is subject to the satisfaction (or waiver, if permissible under applicable Law) prior to the Closing of the following conditions:

6.2.1 Representations and Warranties. Each of the representations and warranties of Parent and Merger Sub contained in Article IV that is qualified by “materiality”, “Parent Material Adverse Effect” or a similar qualifier shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, at and as of the Closing Date, except for representations and warranties made as a of a specified date, the accuracy of which will be determined only as of the specified date.

6.2.2 Performance of Obligations of Parent and Merger Sub. Parent and Merger Sub shall have performed in all material respects all covenants, agreements and obligations required to be performed by them under this Agreement prior to the Closing.

6.2.3 Delivery of Closing Certificate. The Company shall have received a certificate dated as of the Closing Date signed by Chief Executive Officer or Chief Financial Officer of Parent and certifying that the conditions precedent set forth in Section 6.2.1 and Section 6.2.2 have been met.

6.2.4 Stockholder Approval. The Company shall have received the Requisite Stockholder Approval.

ARTICLE VII: TERMINATION

Section 7.1 Termination. This Agreement may be terminated and the Transactions (including the Merger) abandoned at any time prior to the Closing (whether before or after the adoption of this Agreement by the Stockholders):

7.1.1 By the mutual written consent of the Company and Parent;

7.1.2 By either the Company or Parent, upon written notice to the other Party, if the Merger shall not have been consummated on or before the date that is thirty (30) days after the Signing Date, which date may be extended from time to time by mutual written consent of Parent and the Company (such date, as it may be so extended from time to time, the “Outside”

Date”); *provided, however*, that the right to terminate this Agreement under this Section 7.1.2 shall not be available to a Party whose failure to perform any of its obligations under this Agreement has been a principal cause of or directly resulted in the failure of the Merger to occur on or before the Outside Date;

7.1.3 By the Company or Parent, if any final and non-appealable Order or any Law has the effect of enjoining, restraining, preventing, prohibiting or making illegal the consummation of the Merger;

7.1.4 By Parent, if any of the representations or warranties of the Company set forth in ARTICLE III or if any of the representations and warranties of the Noteholders contained in the Note Termination Agreements or the Management Carveout Plan Participants in the Management Carveout Plan Participant Agreements shall not be true and correct or if the Company has failed to perform any covenant or agreement on the part of the Company set forth in this Agreement (including an obligation to consummate the Closing) and, in the case of the representations and warranties, measured on the date of this Agreement or as of any subsequent date (as if made on such date), such that the condition to Closing set forth in Section 6.1.1 or Section 6.1.2 would not be satisfied and the breach or breaches causing such representations or warranties not to be true and correct, or the failures to perform any covenant or agreement, as applicable, are not cured on or prior to the earlier of (i) 20 days after written notice thereof is delivered to the Company and (ii) the Outside Date; *provided* that this provision shall not be available to Parent if Parent is then in breach of this Agreement;

7.1.5 By the Company, if any of the representations or warranties of Parent set forth in ARTICLE IV shall not be true and correct or if Parent has failed to perform any covenant or agreement on the part of Parent set forth in this Agreement (including an obligation to consummate the Closing) such that the conditions to Closing set forth in either Section 6.2.1 and Section 6.2.2 would not be satisfied and the breach or breaches causing such representations or warranties not to be true and correct, or the failures to perform any covenant or agreement, as applicable, are not cured on or prior to the earlier of (i) twenty (20) days after written notice thereof is delivered to Parent and (ii) the Outside Date; *provided* that this provision shall not be available to the Company if the Company is then in breach of this Agreement; and

7.1.6 By Parent, upon written notice to the Company, if since the Interim Balance Sheet Date the Company has experienced a Material Adverse Effect.

Section 7.2 Effect of Termination . In the event this Agreement is terminated pursuant to Section 7.1, this Agreement shall become null and void (other than the provisions of this ARTICLE VII, Section 5.4 (Public Announcement), Section 5.6 (Confidentiality), Section 9.14 (Governing Law), Section 9.15 (Exclusive Jurisdiction; Venue; Service of Process) and Section 9.16 (Jury Trial) and any provision hereof that forms the basis for a claim of breach of this Agreement prior to the termination of this Agreement, all of which shall survive termination of this Agreement and remain in full force and effect, without further liability on the part of the Parties or any of their respective directors, officers or Affiliates, except that nothing shall relieve any Party from liability related to claims sounding in contract, tort or otherwise related to a breach of this Agreement prior to the termination of this Agreement.

ARTICLE VIII: SURVIVAL AND INDEMNIFICATION

Section 8.1 Survival. All representations and warranties of the Parties contained in this Agreement or any other Transaction Agreement or in any certificate or schedule delivered hereunder or thereunder shall survive the Closing until the Hold-Back Payment Date; *provided however* that, (a) the representations and warranties contained in Section 3.1 (Organizational Matters), Section 3.2 (Authority; Noncontravention; Voting Requirements), Section 3.3 (Capitalization), Section 3.4 (No Consents or Approvals), Section 3.13 (Assets; Title; Sufficiency; Condition), and Section 3.22 (Brokers and Other Advisors) (collectively, the “Company Fundamental Representations”), shall survive until the later of six years after the Closing Date and 30 days after the expiration of the applicable statute of limitations; (b) the representations and warranties contained in Section 3.8 (Compliance with Laws; Permits), Section 3.10 (Employee Benefits and Labor Matters), Section 3.15 (Intellectual Property; Technology; Privacy and Security; Information Systems; Disaster Recovery), Section 3.17 (Related Party/Affiliate Transactions), and Section 3.21 (Certain Business Practices) shall survive for a period of two (2) years after the Closing Date; (c) the representations and warranties contained in Section 3.9 (Taxes) shall survive until 30 days following expiration of the applicable statute of limitations (including any extensions or tolling thereof) relating to the underlying Tax matter; (d) the representations and warranties at Section 4.1 (Organization, Standing and Corporate Power) and Section 4.2.1 (Authority) (collectively, the “Parent Fundamental Representations”) and collectively with the Company Fundamental Representations, the “Fundamental Representations”) shall survive until the later of six years after the Closing Date and 30 days after the expiration of the applicable statute of limitations and (e) all of the covenants, agreements and obligations of the Parties contained in this Agreement or any other document, certificate, schedule or instrument delivered or executed in connection herewith that is intended to survive the Closing shall survive the Closing and continue in full force and effect until fully performed (the Hold-Back Payment Date or the last day of any of the periods specified in clauses (a), (b), (c), (d) and (e), the “Survival Date”). Notwithstanding the foregoing, if a claim or notice with respect to recovery under the indemnification provisions hereof is given in accordance with the terms hereof prior to the applicable Survival Date, the claim and any representations and warranties or covenants underlying such claim, shall continue until such claim is finally resolved pursuant to the terms of this ARTICLE VIII. Notwithstanding anything in this Agreement to the contrary, claims for fraud, willful misconduct or intentional misrepresentation shall survive indefinitely.

Section 8.2 Indemnification .

8.2.1 Indemnification by Noteholders, Management Carveout Plan Participants and Parent. Subject to the terms, conditions and limitations of this ARTICLE VIII:

(a) each Noteholder and Management Carveout Plan Participant (severally and not jointly in accordance with such Noteholder’s and Management Carveout Plan Participant’s allocable portion of the Closing Date Merger Consideration as indicated on the Allocation Schedule), shall indemnify, defend and hold harmless the Parent Indemnified Persons from and against any and all Losses suffered, sustained or incurred by any such Parent Indemnified Person, whether or not involving a Third Party Claim, caused by, in connection with, as a result of or arising out of:

(i) any breach of, or misrepresentation or inaccuracy in any of the representations or warranties (other than the Company Fundamental Representations) made by the Company in this Agreement or in any other Transaction Agreement to which it is a party, including in any certificate delivered by or on behalf of the Company pursuant hereto;

(ii) any breach of, or misrepresentation or inaccuracy in any of the Company Fundamental Representations;

(iii) any breach of or failure to perform any covenant or agreement of the Company provided for in this Agreement or any other Transaction Agreement with respect to covenants required to be performed prior to the Closing;

(iv) (A) any Pre-Closing Taxes, (B) any Tax of any member of an affiliated, combined, consolidated, or unitary group of which the Company (or any predecessor) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 (or any similar state, local, or foreign Law), (C) any Tax for a Pre-Closing Tax Period of any Person for which the Company is liable as a transferee or successor, by contract, pursuant to any Law or otherwise, (D) the liability of the Holders or Management Carveout Plan Participants for Transfer Taxes pursuant to Section 5.8, (E) any and all Taxes resulting from a breach of a covenant of the Holders, the Management Carveout Plan Participants or the Holders' Representative contained in Section 5.8; and (F) any and all Taxes imposed on the Holders or Management Carveout Plan Participants resulting from or attributable to the Merger or the other transactions contemplated by this Agreement; provided, however, that in the case of clauses (A)-(F), above, the Holders and Management Carveout Plan Participants shall be liable only to the extent that such Taxes are not included in the calculation of Closing Net Working Capital;

(v) any Company Transaction and Bonus Expenses not paid at or prior to the Closing;

(vi) any inaccuracy in the Allocation Schedule or any Liability under any Company Promissory Note (except for the payment of consideration as contemplated by Section 2.7.5);

(vii) any appraisal rights exercised by any Stockholder to the extent not covered by amounts returned to the Parent with respect to Dissenting Shares pursuant to Section 2.12;

(viii) any MIPS Sale as well as any expenses incurred in connection with a proposed MIPS Sale which are not recovered from the proceeds thereof;

(ix) any fraud, willful misconduct or intentional misrepresentation committed by any Holder, Management Carveout Plan Participant or the Company, including any director, officer or Employee of the Company, in connection with the negotiation and execution of this Agreement or the other Transaction Agreements and the consummation of the Transactions (including the Merger); and

(x) any Action relating to any breach or alleged breach or any other matter of the type referred to in the foregoing clauses (i)-(ix) above (including any Action commenced by any Parent Indemnified Person for the purpose of enforcing any of its rights under this Section 8.2), solely to the extent that such breach or alleged breach, if assumed to be true, would entitle the Parent Indemnified Persons to indemnification hereunder after taking into account the applicable Survival Date.

(b) Parent shall indemnify, defend and hold harmless the Holder Indemnified Persons from and against any and all Losses suffered, sustained or incurred by any such Person, whether or not involving a Third Party Claim, caused by, in connection with, as a result of or arising out of:

(i) any breach of, or misrepresentation or inaccuracy in any of the representations or warranties (other than the Parent Fundamental Representations) made by Parent or Merger Sub in this Agreement or in any other Transaction Agreement to which it is a party;

(ii) any breach of, or misrepresentation or inaccuracy in any of the Parent Fundamental Representations; and

(iii) any breach of or failure to perform any covenant or agreement of Parent or Merger Sub provided for in this Agreement or any other Transaction Agreement.

8.2.2 Calculation of Losses. Solely for purposes of calculating the amount of Losses pursuant to this Article VIII (and not for determining the existence of a breach of any representation or warranty), the representations and warranties of the Company in this Agreement that are qualified by materiality or Company Material Adverse Effect shall be deemed to be made without such materiality or Company Material Adverse Effect qualifiers; provided, however, that this Section 8.2.2 shall not apply to the term "Material Contract."

8.2.3 General Limitations on Claims. Notwithstanding anything herein to the contrary:

(a) (i) (1) the aggregate amount that may be recovered by the Parent Indemnified Persons for Losses under Section 8.2.1(a)(i) (other than with respect to breach of Company Fundamental Representations or with respect to any claims arising from any fraud, willful misconduct or intentional misrepresentation by the Company or any Noteholder or Management Carveout Plan Participant) shall be limited to the amount available pursuant to exercises of the Offset Right, and (2) the aggregate amount that may be recovered by the Parent Indemnified Persons for Losses under Section 8.2.1(a)(i) (to the extent not within the foregoing clause (1)) and Sections 8.2.1(a)(ii) through (a)(x) shall not exceed an amount equal to the Final Merger Consideration; provided, however, that: (i) neither this Section 8.2.3(a), nor any other provision of this Agreement, shall limit the rights of any Parent Indemnified Person to any injunctive relief or other equitable remedy; and (ii) nothing in this Agreement shall limit the liability in amount or otherwise of any Noteholder or Management Carveout Plan Participant with respect to any claims arising from any fraud, willful misconduct or intentional misrepresentation by such Noteholder or Management Carveout Plan Participant;

(b) (i) the aggregate amount that may be recovered by the Holder Indemnified Persons for Losses under Section 8.2.1(b) shall not exceed an amount equal to the Upfront Noteholder Consideration Amount plus the Remaining Hold-Back Shares; provided, however, that: (i) neither this Section 8.2.3(b), nor any other provision of this Agreement, shall limit the rights of any Holder Indemnified Person to any injunctive relief or other equitable remedy; and (ii) nothing in this Agreement shall limit the liability in amount or otherwise of Parent with respect to any claims arising from any fraud, willful misconduct or intentional misrepresentation;

(c) neither the Parent Indemnified Persons nor the Holder Indemnified Persons may recover for Losses under Section 8.2.1(a)(i) or Section 8.2.1(b)(i), as applicable, unless and until Losses have been incurred, paid or properly accrued in an aggregate amount greater than \$250,000 (the "Limitation"), in which case the Parent Indemnified Persons or the Holder Indemnified Persons, as applicable, shall be entitled to seek compensation for all Losses (i.e., back to the first dollar); provided, however, that the Limitation shall not apply with respect to any Damages to the extent (i) resulting from a breach of any Fundamental Representation or (ii) arising from any fraud, willful misconduct or intentional misrepresentation;

(d) each Indemnified Person shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss;

(e) in no event shall any Indemnified Person be entitled to recover for any amounts in respect of consequential or punitive damages except (1) in the case of consequential damages, to the extent such damages are the reasonably foreseeable consequence of the relevant breach, or (2) in the case of punitive damages, to the extent claimed, obligated, paid or awarded to a third party; and

(f) the maximum amount of Losses for which any Noteholder or Management Carveout Plan Participant shall have any Liability under this ARTICLE VIII shall be limited to the portion of the Final Merger Consideration distributed to such Noteholder or Management Carveout Plan Participant (as indicated on the Allocation Schedule); provided, however, that the foregoing shall not limit the liability in amount or otherwise of any Noteholder or Management Carveout Plan Participant with respect to any claims arising from any fraud, willful misconduct or intentional misrepresentation by such Noteholder or Management Carveout Plan Participant.

8.2.4 Pursuit of Offset Right. Parent shall pursue the Offset Right as to any Noteholder or Management Carveout Plan Participant or as a first step with respect to the liability of such Noteholder or Management Carveout Plan Participant for Losses pursuant to Section 8.2.1(a), but only to the extent (i) then available to Parent and (ii) Parent does not commercially reasonably believe in good faith that pursuing the Offset Right would be detrimental to Parent (including with respect to the availability and adequacy of the Offset Right as to other current or potential claims).

Section 8.3 Offset Right .

8.3.1 Offset Right. Without limiting any other remedies of the Parent Indemnified Persons, from and after the Effective Date, and subject to the limitations set forth in this Article VIII, the Parent Indemnified Persons shall be entitled to recover (the “Offset Right”) against the Remaining Hold-Back Shares the amount of any Losses as to which the Noteholders and Management Carveout Plan Participants are obligated to indemnify and hold the Parent Indemnified Persons harmless from under Section 8.2.1(a).

8.3.2 Exercise of Offset Right. To exercise the Offset Right, Parent shall (on behalf of Parent or any other Parent Indemnified Persons at issue), prior to the Hold-Back Payment Date, deliver to the Holders’ Representative at the notice address set forth in Section 9.2 (as the same may be amended from time to time as provided therein and including all Persons to be copied on any notice to the Holders’ Representative), a certificate signed by Parent (an “Offset Certificate”): (i) stating in good faith that one or more of the Parent Indemnified Persons has suffered or incurred Losses which are entitled to be recovered pursuant to the Offset Right (the “Stated Damages”); and (ii) specifying to the extent practicable in reasonable detail the individual items of Stated Damages and the nature of the breach or other circumstance to which each such item is related. Upon the timely delivery of an Offset Certificate stating a bona fide claim for Stated Damages, any issuance of shares of Parent’s Common Stock shall be stayed to the extent of the Stated Damages as provided in Section 2.15.

8.3.3 Perfection of Offset Right. After the expiration of a period of thirty (30) days following the time of delivery of an Offset Certificate to the Holders’ Representative, the Offset Right shall be deemed perfected as to the applicable Stated Damages and the value of the shares of Parent Common Stock issuable to the Noteholders and Management Carveout Plan Participants pursuant to Section 2.15 shall be reduced by an equal amount (as provided in the definition of Remaining Hold-Back Shares) unless (i) the Holders’ Representative shall object in a written statement delivered to Parent to the claims made in the Offset Certificate and (ii) such statement shall have been delivered to Parent prior to the expiration of such thirty (30) day period.

8.3.4 Objection to Offset Right. If the Holders' Representative shall timely object in writing to an exercise of the Offset Right by Parent, the Holders' Representative and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims within thirty (30) days after such objection. If the Holders' Representative and Parent should so agree on a claim, a memorandum setting forth such agreement shall be prepared and signed by such parties, which shall include a statement of the amount of resulting reduction in value (as provided in the definition of Remaining Hold-Back Shares) of the shares of Parent Common Stock issuable to the Noteholders and Management Carveout Plan Participants pursuant to Section 2.15.

8.3.5 Settlement of Offset Right. If no agreement can be reached after good faith negotiation between the Holders' Representative and Parent pursuant to Section 8.3.5, either Parent or the Holders' Representative may initiate an Action with the state or federal courts located in New Castle County Delaware to resolve such dispute. The decision of any such court as to the validity and amount of any claim in such Offset Certificate shall be binding and conclusive upon the parties.

Section 8.4 Claims for Indemnification; Resolution of Conflicts .

8.4.1 Third-Party Claims .

(a) In the event that any Action is instituted, or that any claim is asserted, by any Person not party to this Agreement in respect of an indemnifiable matter hereunder (a "Third Party Claim"), the Indemnified Person seeking indemnification for any related Loss (including a Parent Indemnified Person seeking indemnification for any related loss through an Offset Right) shall notify the Indemnifying Party of any such Action or claim promptly after receiving notice thereof (each, a "Third Party Indemnification Claim Notice"); *provided, however*, that no delay on the part of the Indemnified Person in giving any such notice shall relieve an Indemnifying Party of any indemnification obligations unless, and only to the extent that, such Indemnifying Party is actually and materially prejudiced by such delay and then only to the extent of such prejudice. Subject to the provisions of this Section 8.4.1, and assuming the Indemnified Person does not have the right to elect or does not choose to elect in its Third Party Indemnification Claim Notice to assume the defense of the Third Party Claim in accordance with clause (d) of this Section 8.4.1, the Indemnifying Party shall be entitled at its own expense to conduct and control the defense and settlement of such Third Party Claim on behalf of the Indemnified Person through counsel chosen by the Indemnifying Party and reasonably acceptable to the Indemnified Person if the Indemnifying Party notifies the Indemnified Person in writing within 30 days (or sooner, if the nature of the Third Party Claim so requires) of its intent to do so and confirms that the Indemnifying Party shall be obligated to indemnify the Indemnified Person against all resulting Losses in accordance with this Agreement. If the Indemnifying Party does not elect within 30 days (or sooner, if the nature of the Third Party Claim so requires) to defend against, negotiate, settle or otherwise deal with any Third Party Claim, the Indemnified Person may defend against, negotiate, settle or otherwise deal with such Third Party Claim with counsel of its choice at the expense of the Indemnifying Party.

(b) If the Indemnifying Party elects to defend against, negotiate, settle or otherwise deal with any Third Party Claim:

(i) the Indemnifying Party shall use its commercially reasonable efforts to defend such Third Party Claim;

(ii) the Indemnified Person, prior to the period in which the Indemnifying Party assumes the defense of such matter, may take such reasonable actions to preserve any and all rights with respect to such matter, without such actions being construed as a waiver of the Indemnified Person's rights to defense and indemnification pursuant to this Agreement and without such actions being determinative of the amount of any indemnifiable Losses, except to the extent the Indemnifying Party's ability to defend such action is actually and materially prejudiced by such actions; and

(iii) the Indemnified Person may participate in the defense of such Third Party Claim with separate counsel at its own expense or, if so requested by the Indemnifying Party or, if in the reasonable opinion of counsel to the Indemnified Person, a conflict or potential conflict exists between the Indemnified Person and the Indemnifying Party that would make such separate representation advisable, at the reasonable expense of the Indemnifying Party.

(c) In connection with this Section 8.4.1, the Parties agree to:

(i) cooperate with each other in connection with the defense, negotiation or settlement of any such Third Party Claim;

(ii) make available witnesses in a timely manner to provide testimony through declarations, affidavits, depositions, or at hearing or trial and to work with each other in preparation for such events consistent with deadlines dictated by the particular Third Party Claim;

(iii) preserve all documents and things required by litigation hold orders pending with respect to particular Third Party Claims; and

(iv) provide such documents and things to each other, consistent with deadlines dictated by a particular matter, as required by legal procedure or court order, or if reasonably requested by another Party hereto;

provided that such cooperation referenced in clauses (i) through (iv) shall not be required if it could reasonably be expected to result in a waiver of any attorney-client, work product or other privilege, and *provided further* that the Parties shall use commercially reasonable efforts to avoid production of confidential information (consistent with Law), and to cause all communications among Employees, counsel and others representing any party to a Third Party Claim to be made so as to preserve any applicable attorney-client or work-product privileges.

(d) Except as permitted in this Section 8.4.1, the Indemnifying Party shall not, without the written consent of the Indemnified Person(s) (such consent not to be unreasonably conditioned, withheld or delayed), settle or compromise any Third Party Claim or permit a default or consent to entry of any judgment (each a “Settlement”); *provided, however*, that an Indemnified Person’s written consent shall not be required if (i) the claimant provides such Indemnified Person an unqualified release from all liability in respect of the Third Party Claim, (ii) such Settlement does not impose any additional liabilities or obligations on the Indemnified Person and (iii) with respect to any non-monetary provision of such Settlement, such provisions could not have, or be reasonably expected to have, any adverse effect on the business, assets, financial condition or results of operations of the Indemnified Person and its Subsidiaries, if any. Any Settlement or compromise that does not comply with the preceding sentence shall not be determinative of the amount of Losses with respect to any related claims for indemnification pursuant to this ARTICLE VIII. The costs incurred by Holders’ Representative pursuant to participating in the defense of any Third Party Claims shall constitute Holders’ Representative Expenses.

(e) Notwithstanding anything in this Agreement to the contrary, if (i) a Third Party Claim seeks relief other than the payment of monetary damages, (ii) the subject matter of a Third Party Claim relates to the ongoing business of the Indemnified Person, which Third Party Claim, if decided against the Indemnified Person, could adversely affect the ongoing business of the Indemnified Person, (iii) the claim for indemnification relates to or arises in connection with any criminal proceeding, action or indictment, or (iv) the Indemnified Person reasonably concludes that the amount of the Third Party Claim and associated defense costs shall exceed the limits on the Indemnifying Party’s obligations under Section 8.2.3(a) or the Indemnifying Party’s financial resources available to defend against the Third Party Claim, then, in each such case, the Indemnified Person alone shall be entitled to contest, defend and settle such Third Party Claim. If the Indemnified Person elects to exercise such right to contest, defend and settle such Third Party Claim, then the Indemnified Person shall notify the Indemnifying Party of such election within 30 days of the later of (x) receiving the applicable Third Party Indemnification Claim Notice or (y) the occurrence of the event giving rise to the Indemnified Person’s right to make such election pursuant to clause (i), (ii) or (iii) of this Section 8.4.1(e). In such event, the Indemnified Person shall instead have the right to be represented by counsel of its choice (of which it shall notify the Indemnifying Party) at the Indemnifying Party’s reasonable expense and to defend against, negotiate, settle or otherwise deal with any Third Party Claim. If the Indemnified Person elects to defend against, negotiate, settle or otherwise deal with any Third Party Claim, then (1) the Indemnified Person shall use its commercially reasonable efforts to defend such Third Party Claim, conduct such defense in a good faith and reasonably diligent manner, keep the Indemnifying Party reasonably informed of the status of such defense, and use commercially reasonable efforts to cooperate with the Indemnifying Party with respect to such defense during the course of such defense, and (2) the Indemnifying Party may participate, at its own expense, in the defense of such Third Party Claim. If the Indemnified Person does not elect to contest, defend and settle such Third Party Claim, then the Indemnifying Party shall then have the right to contest and defend such Third Party Claim as described above in Section 8.4.1(a).

Notwithstanding the foregoing, any Third Party Claims in respect of Taxes shall be governed by Section 5.8.3 rather than this Section 8.4.1. To the extent that the provisions of this Section 8.4.1 conflict with the provisions of Section 5.8(c) (Tax Contests), Section 5.8(c) shall control.

8.4.2 Notification of Other Indemnification Claims. In order for a Parent Indemnified Person to be entitled to any indemnification for claims other than as contemplated or covered by the Offset Right (although, for the avoidance of doubt, a claim tendered pursuant to the Offset Right shall suffice for all purposes even if not covered, or fully covered, by the Offset Right), such Parent Indemnified Person shall, promptly upon the discovery of the matter giving rise to any Losses, notify the Holders' Representative in writing of such Losses specifying in reasonable detail the nature of such Losses and the amounts of liability estimated to accrue therefrom (a "Non-Offset Notice"). The failure to so notify the Holders' Representative shall not relieve any Noteholder or Management Carveout Plan Participant from any liability that such Noteholder or Management Carveout Plan Participant may have to Parent, except to the extent that any such Noteholder or Management Carveout Plan Participant is materially prejudiced as a result of such failure. Thereafter, Parent shall keep the Holders' Representative reasonably updated with respect to the status of the Losses at issue and the defense thereof. The Holders' Representative may object to a claim for indemnification set forth in a Non-Offset Notice by delivering a notice to the Parent Indemnified Person seeking indemnification within 30 days of the delivery of the Non-Offset Notice, setting forth in reasonable detail the objections to the claim. If the Holders' Representative either notifies the applicable Indemnified Person that it does not object or does not object in writing by the end of such 30-day period, such failure to so object shall be an irrevocable acknowledgment that the Parent Indemnified Person is entitled to the full amount of the claims set forth in such Non-Offset Notice, and the Holders' Representative (as well as the Noteholders and Management Carveout Plan Participants) shall take all necessary actions under this Agreement to effect payment in respect thereof. If the Holders' Representative shall timely object in writing to a Non-Offset Notice, the Holders' Representative and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to such claim within thirty (30) days after such objection. If the Holders' Representative and Parent should so agree on a claim, a memorandum setting forth such agreement shall be prepared and signed by the Holders' Representative and Parent. If no agreement can be reached after good faith negotiation between the Holders' Representative and Parent, either Parent (or any Parent Indemnified Person) or the Holders' Representative may initiate an Action with the state or federal courts located in New Castle County Delaware to resolve such dispute. The decision of any such court as to the validity and amount of any claim in such Non-Offset Notice shall be binding and conclusive upon the parties.

8.4.3 Claims Unaffected by Investigation. The right of an Indemnified Person to indemnification or to assert or recover on any claim hereunder shall not be affected by any investigation conducted with respect to, or any knowledge acquired or capable of being acquired, at any time, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy of or compliance with any of the representations, warranties, covenants, or agreements set forth in this Agreement. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or agreement, shall not affect the right to indemnification or other remedy based on such representation, warranty, covenant or agreement.

8.4.4 Surviving Corporation. The Parties acknowledge and agree that if the Surviving Corporation suffers, incurs or otherwise becomes subject to any Losses as a result of or in connection with any misrepresentation or inaccuracy in or breach of any representation, warranty, covenant or agreement, then (without limiting any of the rights of the Surviving Corporation as an Indemnified Person) the Parent shall also be deemed, by virtue of its ownership of the stock of the Surviving Corporation, to have incurred Losses as a result of and in connection with such misrepresentation, inaccuracy or breach.

8.4.5 Exclusive Remedy. Subject to Section 9.9 and Section 5.8, and except with respect to fraud, willful misconduct and intentional misrepresentation and the provisions set forth in Section 2.14, the Parties acknowledge and agree that the remedies provided for in this ARTICLE VIII shall be the Parties' sole and exclusive remedy with respect to any and all claims for any breach, inaccuracy, misrepresentation or nonperformance, as applicable, of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement.

8.4.6 Indemnification Adjusts Merger Consideration for Tax Purposes. Each Party shall, including retroactively, treat indemnification payments under this Agreement as well as exercises of the Offset Right as adjustments to the consideration paid in the Merger for Tax purposes to the extent permitted under applicable Law.

8.4.7 No Subrogation. No Holder or Management Carveout Plan Participant shall make any claim for indemnification against either the Parent Indemnified Persons or the Surviving Corporation based on the fact that such Holder or Management Carveout Plan Participant was a controlling person, director, Employee or agent of the Company (whether such claim is for Losses of any kind or otherwise and whether such claim is pursuant to Law, a Charter Document, a Contract or otherwise) with respect to any claim brought by a Parent Indemnified Person against any Holder or Management Carveout Plan Participant under or relating to this Agreement or any other Transaction Agreement or the Transactions. With respect to any claim brought by a Parent Indemnified Person against any Noteholder or Management Carveout Plan Participant under or relating to this Agreement, any Transaction Agreement or the Transactions, each Noteholder and Management Carveout Plan Participant expressly waives any right of subrogation, contribution, advancement, indemnification or other claim against the Company with respect to any indemnification obligation or any other liability to which such Holder or Management Carveout Plan Participant may become subject under or in connection with this Agreement.

8.4.8 Specific Element of Consideration. The indemnification obligations of the Noteholders and Management Carveout Plan Participants in this Article VIII are, without limitation, (a) a specific element of the consideration that induced Parent to enter into this Agreement and to perform its obligations as contemplated hereby and (b) intended to be fully enforceable on the terms provided in this Article VIII.

Section 8.5 Holders' Representative

8.5.1 Appointment. By virtue of approving the Merger and the execution of the Letter of Transmittal, Note Termination Agreement and/or Management Carveout Plan Participant Agreement, each of the Holders and Management Carveout Plan Participants shall irrevocably nominate, constitute and appoint Holders' Representative with full power of substitution, to act in the name, place and stead of the Holders and Management Carveout Plan Participants for purposes of executing any documents and taking any actions that Holders' Representative may, in its sole discretion, determine to be necessary, desirable or appropriate in connection with any claim for indemnification, compensation or reimbursement under this ARTICLE VIII. OrbiMed Private Investments III, LP hereby accepts its appointment as Holders' Representative.

8.5.2 Authority. The Holders and Management Carveout Plan Participants grant to Holders' Representative full authority to execute, deliver, acknowledge, certify and file on behalf of each such Holder or and Management Carveout Plan Participant, as applicable (in the name of any or all of the Holders or and Management Carveout Plan Participants or otherwise) any and all documents that Holders' Representative may, in its sole discretion, determine to be necessary, desirable or appropriate, in such forms and containing such provisions as Holders' Representative may, in its sole discretion, determine to be appropriate, in performing its duties as contemplated by this Section 8.5. Notwithstanding anything in any Transaction Agreement to the contrary: (a) each Indemnified Person shall be entitled to deal exclusively with Holders' Representative on all matters relating to any claim for indemnification, compensation, reimbursement or set off (including Offset Rights) pursuant to ARTICLE VIII; and (b) the Parent, each Parent Indemnified Person, the Exchange Agent, and each Holder and Management Carveout Plan Participant shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Holder or and Management Carveout Plan Participant by Holders' Representative and on any other action taken or purported to be taken on behalf of any Holder or and Management Carveout Plan Participant by Holders' Representative as fully binding upon such Holder or and Management Carveout Plan Participant. A decision, act, consent or instruction of Holders' Representative, including an amendment, extension or waiver of this Agreement pursuant to Section 9.4 or Section 9.5 shall constitute a decision of the Holders and Management Carveout Plan Participants and shall be final, binding and conclusive upon the Holders and Management Carveout Plan Participants. The Exchange Agent, Parent, Merger Sub, and the Surviving Corporation may rely upon any such decision, act, consent or instruction of Holders' Representative as being the decision, act, consent or instruction of the Holders and Management Carveout Plan Participants. The Exchange Agent, the Parent, Merger Sub, and the Surviving Corporation are hereby relieved from any liability to any Person for any acts done by them in accordance with such decision, act, consent or instruction of Holders' Representative.

8.5.3 Power of Attorney. The Holders and Management Carveout Plan Participants recognize and intend that the power of attorney granted to the Holders' Representative: (a) is coupled with an interest and is irrevocable; (b) may be delegated by Holders' Representative; and (c) shall survive the death, dissolution or incapacity, as applicable, of each of the Holders and Management Carveout Plan Participants.

8.5.4 Replacement. If Holders' Representative is dissolved, resigns or is otherwise unable to fulfill its responsibilities hereunder, the Holders and Management Carveout Plan Participants shall (by consent of those Persons entitled, or who were entitled, to at least a majority of the Initial Hold-Back Shares), within 10 days after such dissolution, resignation or inability, appoint a successor to Holders' Representative reasonably satisfactory to Parent. Any such successor shall succeed Holders' Representative as Holders' Representative hereunder. If for any reason there is no Holders' Representative at any time, all references herein to Holders' Representative shall be deemed to refer to the Holders and Management Carveout Plan Participants who may take action by the written consent of Persons entitled to at least a majority of any further distributions hereunder.

8.5.5 Indemnification; Holders' Representative Expenses. The Holders' Representative shall not be liable to the Holders or Management Carveout Plan Participants for any action taken or omitted to be taken by it as Holders' Representative except in the case of willful misconduct or gross negligence. The Holders and Management Carveout Plan Participants shall severally, but not jointly, indemnify Holders' Representative and hold Holders' Representative harmless from and against all Holders' Representative Expenses.

ARTICLE IX: GENERAL PROVISIONS

Section 9.1 Interpretation. The following rules shall apply to the interpretation and construction of the terms and provisions of this Agreement and the other Transaction Agreements:

9.1.1 Provisions.

(a) When a reference is made in this Agreement or another Transaction Agreement to an "Article," "Section," "Exhibit" or "Schedule," such reference shall be to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated.

(b) The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(c) Whenever the words "include," "includes," or "including" are used in this Agreement or any other Transaction Agreement, such words shall be deemed to be followed by the words "without limitation."

(d) The words "hereof," "herein," and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement unless otherwise expressly indicated in the accompanying text.

(e) The use of "or" is not intended to be exclusive unless otherwise expressly indicated in the accompanying text.

(f) The defined terms contained in this Agreement or any of the other Transaction Agreements are applicable to the singular as well as the plural forms of such terms. Reference to the masculine gender shall be deemed to also refer to the feminine gender and *vice versa* .

(g) A reference to documents, instruments or agreements also refers to all addenda, exhibits or schedules thereto.

(h) Any reference to a provision or part of a Law shall include a reference to that provision or part as it may be renumbered or amended from time to time and any successor provision or part or any renumbering or amendment thereof unless otherwise indicated herein.

(i) References to “deliver,” “furnish,” “provided” or “made available” means that such documents or information referenced are contained, as of a date which is at least five (5) Business Days prior to the date of this Agreement, in the Company’s “GSG Data Room” electronic data room hosted by Donnelley Financial Solutions Venue.

(j) When calculating the period of time before which, within which or following which, any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

9.1.2 No Presumption. The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall be used to favor or disfavor any Party by virtue of the authorship of any provision of this Agreement.

Section 9.2 Notices . All notices, waivers, consents and other communications to any Party hereunder shall be in writing and shall be deemed given (a) when personally delivered, (b) when receipt is electronically confirmed, if sent by facsimile or email of a PDF document, (c) one Business Day after deposit with a nationally recognized overnight courier, specifying next day delivery, with proof of receipt or (d) three Business Days after being sent by registered or certified mail, return receipt requested and postage prepaid, in each case to the Parties at the address, or if applicable, facsimile number or email address following such Party’s name below or such other address, facsimile number or email address as such Party may subsequently designate to the other Parties by notice in accordance with this Section 9.2 :

If to Parent or Merger Sub, to:

Invitae Corporation
1400 16th Street
San Francisco, CA 94103
Attention: Lee Bendekgey, COO and Tom Brida, General Counsel
Email:

with copies (which shall not constitute notice) to:

Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300
San Diego, California 92130
Attention: Mike Hird
Email: mike.hird@pillsburylaw.com

If to the Company (before the Closing), to:

Good Start Genetics, Inc.
237 Putnam Ave # 2
Cambridge, MA 02139
Attention: Jeffrey Lubber
Email: jlubber@gsgenetics.com
Facsimile:

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

Foley Hoag LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
Attention: Alex Aber
Email: AAber@foleyhoag.com
Facsimile: (617) 832-7000

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

Safeguard Scientifics, Inc.
170 North Radnor-Chester Road, Suite 200
Radnor, Pennsylvania 19087
Attention: Chief Operating Officer
Facsimile: (610) 482-9105

If to Holders' Representative, to:

OrbiMed Private Investments III, LP
601 Lexington Avenue
54 th Floor
New York, New York 10022
Email:
Facsimile: (212) 739-6444

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

Foley Hoag LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
Attention: Alex Aber
Email: AAber@foleyhoag.com
Facsimile: (617) 832-7000

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

Safeguard Scientifics, Inc.
170 North Radnor-Chester Road, Suite 200
Radnor, Pennsylvania 19087
Attention: Chief Operating Officer
Facsimile: (610) 482-9105

Section 9.3 Assignment and Succession . Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by any of the Parties without the written consent of the other Parties, except that Parent or Merger Sub may, without the prior consent of any other Party, collaterally assign this Agreement to any lender; *provided* that no such assignment shall relieve the assigning Party of any of its obligations hereunder. Any assignment of this Agreement or any of the rights, interests or obligations hereunder not permitted under this Section 9.3 shall be null and void *ab initio* . Subject to the foregoing terms of this Section 9.3 , this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.

Section 9.4 Amendment or Supplement . Subject to the requirements of applicable Law, this Agreement may be amended at any time by execution of an instrument in writing identifying itself as an amendment signed, when amended prior to the Closing, by Parent, Merger Sub and the Company and, when amended on or after the Closing, by Parent, the Company and Holders' Representative. For purposes of this Section 9.4 , the Holders and Management Carveout Plan Participants have agreed pursuant to the Letters of Transmittal, Note Termination Agreements and/or Management Carveout Plan Participant Agreement that any amendment of this Agreement consented to by Holders' Representative shall be binding on and enforceable against them, whether or not they have signed this Agreement or such amendment.

Section 9.5 Waivers . No waiver of any provision of this Agreement shall be valid and binding unless it is in writing and signed by the Party against whom the waiver is to be effective. No failure on the part of any Party in exercising any right, privilege or remedy hereunder and no delay on the part of any Party in executing any right, privilege or remedy under this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right hereunder. No notice to or demand on a Party made hereunder shall operate as a waiver of any right of the Party giving such notice or making such demand to take further action without notice or demand as permitted hereunder.

Section 9.6 Entire Agreement . This Agreement, including the Schedules and Exhibits hereto and the other documents referred to herein which form a part hereof, the Confidentiality Agreement and the Transaction Agreements contain the entire understanding of the Parties with respect to the subject matter contained herein and therein. This Agreement supersedes all prior and contemporaneous, agreements, arrangements, contracts, discussions, negotiations, undertakings and understandings (whether written or oral) between the Parties with respect to such subject matter (other than the Confidentiality Agreement and Transaction Agreements). Upon the Closing, the Confidentiality Agreement shall automatically terminate and none of the Parties shall have any further Liability or obligation thereunder.

Section 9.7 No Third-Party Beneficiaries . Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties) any right, benefit or remedy of any nature whatsoever under this Agreement, except that after the Effective Time, Parent Indemnified Persons shall be third party beneficiaries for purposes of enforcing the rights granted to such Parent Indemnified Persons. For the avoidance of doubt, no consent of any Indemnified Person shall be necessary to amend any provision of this Agreement.

Section 9.8 Remedies Cumulative . Except as otherwise provided in this Agreement, all rights and remedies of each of the Parties shall be cumulative and the exercise of any one or more rights or remedies shall not preclude the exercise of any other right or remedy available hereunder or under applicable Law.

Section 9.9 Specific Performance . The Parties agree that each of the Parties would be irreparably harmed if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by the other Parties could not be compensated adequately by monetary damages alone. Accordingly, the Parties agree that, in addition to any other remedy to which such Party may be entitled to at Law or in equity, each Party shall be entitled to temporary, preliminary and/or permanent injunctive relief or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement (including the right to compel the other Parties to cause the Merger to be consummated on the terms and subject to conditions set forth in this Agreement) without having to prove irreparable harm or that monetary damages would be inadequate. The Parties expressly waive any requirement under any Law that the other Parties obtain any bond or give any other undertaking in connection with any action seeking injunctive relief or specific performance of any of the provisions of this Agreement. Each of the Parties further agree that in the event of any action for specific performance relating to this Agreement or the Merger, such Party shall not assert and hereby waives the defense that a remedy at Law would be adequate or that specific performance is not an appropriate remedy for any reason in Law or equity.

Section 9.10 Severability . If a court of competent jurisdiction finds that any term or provision of the Agreement is invalid, illegal or unenforceable under any Law or public policy, the remaining provisions of the Agreement shall remain in full force and effect if the economic and legal substance of this Agreement and the Merger shall not be affected in any manner materially adverse to any Party. Any such term or provision found to be illegal, invalid or unenforceable only in part or in degree shall remain in full force and effect to the extent not invalid, illegal or unenforceable. Upon the determination that any term or provision is invalid, illegal or unenforceable, the Parties intend that such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent possible under applicable Law and compatible with the consummation of the Transactions as originally intended.

Section 9.11 Costs and Expenses . Except as otherwise specified herein, whether or not the Merger is consummated, each Party shall pay all costs and expenses it has incurred in connection with this Agreement and the Merger.

Section 9.12 Time of Essence . The Parties acknowledge that the Outside Date specified in Section 7.1.2 is essential so no Party wishing to terminate this Agreement in accordance with Section 7.1 shall be required to extend the Outside Date to allow any other Party to satisfy any condition or perform any obligation under this Agreement.

Section 9.13 Counterparts . This Agreement may be executed in several counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one instrument. The exchange of copies of this Agreement and manually executed signature pages by transmission by facsimile or by email of a PDF of a handwritten original signature or signatures to the other Parties shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original Agreement for all purposes. The signature of a Party transmitted by facsimile or other electronic means shall be deemed to be an original signature for any purpose.

Section 9.14 Governing Law . This Agreement and all claims or causes of action (whether sounding in contract or tort) arising under or related to this Agreement, shall be governed by and construed in accordance with, the Laws of the State of Delaware, without regard to any rule or principle that might refer the governance or construction of this Agreement to the Laws of another jurisdiction.

Section 9.15 Exclusive Jurisdiction; Venue; Service of Process . In any action or proceeding between any of the Parties arising under or related to this Agreement, the other Transaction Agreements or the Merger, each of the Parties (a) knowingly, voluntarily, 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 that such court does not accept jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware, (b) agrees that all claims in respect of any such action or proceeding shall be heard and determined exclusively in accordance with clause (a) of this Section 9.15, (c) waives any objection to the laying of venue of any such action or proceeding in such courts, including any objection that any such action or proceeding has been brought in an inconvenient forum or that the court does not have jurisdiction over any Party and (d) agrees that service of process upon such Party in any such action or proceeding shall be effective if such process is given as a notice in accordance with Section 9.2. The Parties agree that any Party may commence a proceeding in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by one of the above-named courts.

Section 9.16 JURY TRIAL . EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND UNDER THE PROFESSIONAL ADVICE OF COUNSEL WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW,

ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LEGAL ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE TRANSACTION AGREEMENTS OR THE MERGER BETWEEN ANY OF THE PARTIES.

Section 9.17 Representation of the Holders and Affiliates . Each of Parent, Merger Sub and the Surviving Corporation, for itself and its applicable Affiliates and each of their respective current, former and future officers, directors, employees, agents, advisors, successors and assigns (collectively, the “Releasees”), hereby irrevocably acknowledges and agrees that as to all communications pertaining to the Holders and their counsel, including Foley Hoag LLP, made in connection with the negotiation, preparation, execution and delivery of this Agreement or relating to the process for the sale of the Company by the Holders, the attorney-client privilege belongs to the Holders and shall not pass to or be claimed or sought to be obtained through any process by Parent or the Surviving Corporation, or any Person purporting to act on behalf of or through Parent or the Surviving Corporation; *provided, however* , that applicable communications between the Company and its legal counsel, in each case that were not made in connection with the negotiation, preparation, execution and delivery of this Agreement or that do not relate to the process for the sale of the Company by the Holders shall pass to the Surviving Corporation. From and after the Closing, each of Parent and the Surviving Corporation, on behalf of itself and its applicable Releasees, waives and will not assert any attorney-client privilege with respect to any communication between Foley Hoag LLP and the Company or any Holders occurring during the representation in connection with the negotiation, preparation, execution and delivery of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby. Parent hereby agrees, on its own behalf and on behalf of its applicable Releasees, that Foley Hoag LLP may serve as counsel to each and any Holder, on the one hand, and the Company, on the other hand, in connection with the negotiation, preparation, execution, deliver and performance of this Agreement and the transactions contemplated hereby and that, following the consummation of the transactions contemplated hereby, Foley Hoag LLP may serve as counsel to each and any Holder in connection with any dispute, litigation, claim, proceeding or obligation arising out of or relating to this Agreement notwithstanding such representation or any continued representation of the Surviving Corporation or in connection with any other matter relating to the process for the sale of the Company by the Holders. Each of Parent, Merger Sub and the Company hereby consents to and irrevocably waives any conflicts that may arise in connection with such representation.

* * *

[*Signature page follows*]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

INVITAE CORPORATION

By: /s/ Lee Bendekgey

Name: Lee Bendekgey

Title: Chief Operating Officer

BUENO MERGER SUB, INC.

By: /s/ Lee Bendekgey

Name: Lee Bendekgey

Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

GOOD START GENETICS, INC.

By: /s/ Jeffrey Luber

Name: Jeffrey Luber

Title: President and Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

NOTEHOLDERS:

SAFEGUARD SCIENTIFICS
(DELAWARE), INC.

By: /s/ Brian J. Sisko

Name: Brian J. Sisko

Title: Vice President

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF, the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

NOTEHOLDERS:

ORBIMED PRIVATE INVESTMENTS III, L.P.

By: OrbiMed Capital GP III LLC,
its General Partner

By: OrbiMed Advisors LLC,
its Managing Member

By: /s/ Carl Gordon

Name: Carl Gordon

Title: Member

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

NOTEHOLDERS:

ORBIMED ASSOCIATES III, L.P.

By: OrbiMed Advisors LLC,
its General Partner

By: /s/ Carl Gordon
Name: Carl Gordon
Title: Member

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

NOTEHOLDERS:

By: /s/ Robert J. Carpenter

Name: Robert J. Carpenter

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

NOTEHOLDERS:

By: /s/ Gregory Porreca
Name: Gregory Porreca

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

NOTEHOLDERS:

By: /s/ Jeffrey Luber

Name: Jeffrey Luber

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

NOTEHOLDERS:

By: /s/ Marc Jones

Name: Marc Jones

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

MANAGEMENT CARVEOUT PLAN PARTICIPANTS:

By: /s/ Jeffrey Luber

Name: Jeffrey Luber

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

MANAGEMENT CARVEOUT PLAN PARTICIPANTS:

By: /s/ Marc Jones

Name: Marc Jones

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

MANAGEMENT CARVEOUT PLAN PARTICIPANTS:

By: /s/ Greg Porreca

Name: Greg Porreca

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

MANAGEMENT CARVEOUT PLAN PARTICIPANTS:

By: /s/ Jim Frontero

Name: Jim Frontero

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

MANAGEMENT CARVEOUT PLAN PARTICIPANTS:

By: /s/ Dave McManus

Name: Dave McManus

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

MANAGEMENT CARVEOUT PLAN PARTICIPANTS:

By: /s/ Marc Beer

Name: Marc Beer

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

MANAGEMENT CARVEOUT PLAN PARTICIPANTS:

By: /s/ Charlie Wagner

Name: Charlie Wagner

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

MANAGEMENT CARVEOUT PLAN PARTICIPANTS:

By: /s/ Robert Carpenter

Name: Robert Carpenter

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

MANAGEMENT CARVEOUT PLAN PARTICIPANTS:

By: /s/ Paris Wallace

Name: Paris Wallace

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF , the Parties have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

HOLDERS' REPRESENTATIVE:

ORBIMED PRIVATE INVESTMENTS III, L.P.

By: OrbiMed Capital GP III LLC,
its General Partner

By: OrbiMed Advisors LLC,
its Managing Member

By: /s/ Carl Gordon

Name: Carl Gordon

Title: Member

[Signature Page to Agreement and Plan of Merger]

INVITAE CORPORATION

CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS

OF

SERIES A CONVERTIBLE PREFERRED STOCK

PURSUANT TO SECTION 151 OF THE
DELAWARE GENERAL CORPORATION LAW

The undersigned, Sean George, Ph.D., does hereby certify that:

1. He is the Chief Executive Officer of Invitae Corporation, a Delaware corporation (the “Corporation”).
2. The Corporation is authorized by Article IV of its Certificate of Incorporation (the “Certificate of Incorporation”) to issue 20,000,000 shares of preferred stock, none of which are issued and outstanding.
3. The following resolutions were duly adopted by the board of directors of the Corporation (the “Board of Directors”):

WHEREAS, the Certificate of Incorporation provides for a class of its authorized stock known as preferred stock, consisting of 20,000,000 shares, \$0.0001 par value per share, issuable from time to time in one or more series;

WHEREAS, the Board of Directors is authorized to fix, and to cause such preferred stock to be issued in series with such voting powers and such designations, preferences and relative, participating, optional or other special rights; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of preferred stock, which shall consist of 3,458,823 shares of the Preferred Stock (as defined below) which the Corporation has the authority to issue, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock and does hereby determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Bloomberg” means Bloomberg Financial Markets.

“Business Day” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

“Closing Bid Price” and “Closing Sale Price” means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in

the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported on the OTC Pink marketplace operated by OTC Markets Group Inc. If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Corporation and the Holder. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the Corporation’s common stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

“Convertible Securities” means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

“DTC” means the Depository Trust Company.

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

“Fundamental Transaction” means that the Corporation shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another Person (but excluding a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Corporation), (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the assets of the Corporation to another Person, (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than the 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination), (v) reorganize, recapitalize or reclassify its Common Stock pursuant to which the Common Stock is effectively converted or exchanged for other securities, cash or property, or (vi) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock.

“Holder” means, as of any date, a registered holder of record of Preferred Stock on the books and records of the Corporation or any registrar or transfer agent for the Preferred Stock.

“Options” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

“Original Issue Date” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“Person” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

“Principal Market” means The New York Stock Exchange.

“Purchase Agreement” means the Securities Purchase Agreement, dated July 31, 2017, among the Corporation, the original Holders and the other parties thereto, as amended, modified or supplemented from time to time in accordance with its terms.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Trading Day” means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded; provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

“Transfer Agent” means American Stock Transfer & Trust Company, LLC, the current transfer agent for the Common Stock, and any successor transfer agent of the Corporation.

“Weighted Average Price” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg through its “Volume at Price” function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported on the OTC Pink marketplace operated by OTC Markets Group Inc. If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Corporation and the Holder. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

Section 2. Designation, Amount and Par Value. This series of preferred stock shall be designated as the Corporation’s Series A Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be 3,458,823. Each share of Preferred Stock shall have a par value of \$0.0001 and a stated value equal to \$8.50 (the “Stated Value”). The Preferred Stock may be represented by certificates or may be issued in book entry only; any references herein to certificates shall also be deemed to refer to book entry notations for such securities, to the extent applicable.

Section 3. Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends in the form of Common Stock) unless the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to that dividend per share of Preferred Stock as would equal the product of (A) the dividend payable on each share of Common Stock and (B) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the

record date for determination of holders entitled to receive such dividend. Other than as set forth in the previous sentence, no other dividends shall be paid on shares of Preferred Stock, and the Corporation shall pay no dividends (other than dividends in the form of Common Stock) on shares of the Common Stock unless it complies with the previous sentence.

Section 4. Voting Rights. The Holders of Preferred Stock have no voting power whatsoever, except as otherwise required by the Delaware General Corporation Law (the “DGCL”) as modified by the Certificate of Incorporation.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a “Liquidation”), after the satisfaction in full of the debts of the Corporation and the payment of any liquidation preference owed to the holders of shares of capital stock of the Corporation ranking prior to the Preferred Stock upon liquidation, the Holders of the Preferred Stock shall receive \$0.001 per share prior to the payment of any amount to any holders of capital stock of the Corporation ranking junior to Preferred Stock and thereafter shall participate *pari passu* with the holders of the Common Stock (on an as-if-converted-to-Common-Stock basis without regard to any limitation in Section 6(d) on the conversion of this Preferred Stock) in the net assets of the Corporation. The Corporation shall mail written notice of any such Liquidation, not less than 30 days prior to the payment date stated therein, to each Holder. Neither (i) the consolidation or merger of the Corporation into or with any other entity or entities, (ii) the consolidation or merger of any entity or entities into the Corporation, nor (iii) the sale, lease or conveyance of all or substantially all the Corporation’s assets shall be deemed to be a Liquidation within the meaning of this Section 5.

Section 6. Conversion.

(a) Conversions at Option of Holder. Each share of Preferred Stock, or fraction thereof, shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a “Notice of Conversion”), duly completed and executed. Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile or email such Notice of Conversion to the Corporation (such date, the “Conversion Date”). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue.

(b) Conversion Price. The conversion price for the Preferred Stock shall equal \$8.50, subject to adjustment as provided herein (the “Conversion Price”).

(c) Mechanics of Conversion.

i. Delivery of Certificate Upon Conversion. Not later than three (3) Trading Days after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the converting Holder one or more certificates representing the Conversion Shares or, upon written notice to the converting Holder, a book-entry statement representing the Conversion Shares which, to the extent provided in the Purchase Agreement, shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Purchase Agreement) representing the number of Conversion Shares being acquired upon the conversion of the Preferred Stock. If the Corporation shall fail for any reason or for no reason (other than a failure caused by incorrect or incomplete information provided by Holder to the Corporation) to deliver to the Holder within three (3) Trading Days of the Conversion Date a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Corporation’s share register or to credit the Holder’s balance account with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder’s conversion of shares of Preferred Stock, and if on or after such Trading Day the Holder purchases, or another Person purchases on the Holder’s behalf or for the Holder’s account (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of shares of Common Stock issuable upon such exercise that the Holder anticipated receiving from the Corporation (a “Buy-In”), then the Corporation shall, within three (3) Business Days after the Holder’s written request and in the Holder’s discretion, either (i) pay cash to the Holder in an amount equal to the Holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the “Buy-In Price”), at which point the Corporation’s obligation to deliver such certificate (and to issue such Conversion Shares) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Conversion Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Bid Price on the date of exercise.

ii. Obligation Absolute. The Corporation’s obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder.

iii. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other Holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and non-assessable.

iv. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

v. Transfer Taxes and Expenses. The issuance of certificates for shares of the Common Stock on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

(d) Beneficial Ownership Limitation. Notwithstanding any provision to the contrary contained herein, any Notice of Conversion delivered by or on behalf of the Holder shall be deemed automatically not to have been so delivered by such person to the extent, but only to the extent, the delivery of any shares of Common Stock or any other security otherwise deliverable upon such conversion would result in the Holder in the aggregate (together with the Holder's affiliates and any member of a Section 13(d) "group" with the Holder) having "beneficial ownership" as determined in accordance with Section 13(d) of the Exchange Act and the rules thereunder ("Beneficial Ownership") of Common Stock or any other class of any equity security (other than an exempted security) that is registered pursuant to Section 12 of the Exchange Act (a "Class") in excess of the Beneficial Ownership Limitation (as defined below). For purposes of calculating Beneficial Ownership, the aggregate number of shares of Common Stock beneficially owned by the Holder shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which the determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon exercise or conversion of the unexercised or unconverted portion of the Preferred Stock or any other securities of the Corporation beneficially owned by the Holder (including, without limitation, any convertible notes, convertible stock or warrants) that are subject to a limitation on conversion or exercise analogous to the limitation contained herein. Any purported delivery to any Holder of a number of shares of Common Stock or any other security upon conversion of the Preferred Stock shall be void and have no effect to the extent, but only to the extent, that before or after such delivery, the Holder would have Beneficial Ownership of Common Stock or any other Class in excess of the Beneficial Ownership Limitation. The Holder shall disclose to the Corporation the number of shares of Common Stock or other applicable Class that it, its affiliates or any member of a group with the Holder owns or has the right to acquire through the exercise of derivative securities and any limitations on exercise or conversion analogous to the limitation contained herein contemporaneously or immediately prior to submitting a Notice of Conversion. "Beneficial Ownership Limitation" shall initially be 4.99%, and may subsequently be increased or decreased to any other percentage at the Holder's election on 61 days' notice delivered to the Corporation.

Section 7. Certain Adjustments

(a) Adjustment upon Subdivision or Combination of Common Stock. If the Corporation at any time on or after the issuance of the Preferred Stock subdivides (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Conversion Shares will be proportionately increased. If the Corporation at any time on or after the issuance of the Preferred Stock combines (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased and the number of Conversion Shares will be proportionately decreased. Any adjustment under this Section 7(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Purchase Rights. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the “Purchase Rights”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of its Preferred Stock (without regard to any limitations on the conversion of the Preferred Stock) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights; provided, however, to the extent that the Holder’s right to participate in such Purchase Right would result in the Holder’s ownership exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent.

(c) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation shall distribute to all holders of Common Stock (and not to the Holders) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security other than the Common Stock (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction), then in each such case the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the Weighted Average Price determined as of the record date mentioned above, and of which the numerator shall be such Weighted Average Price on such record date less the then per share fair market value at such record date of the portion of such assets or evidence of indebtedness so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors in good faith. In either case the adjustments shall be described in a statement provided to the Holder of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

(d) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, the Corporation, directly or indirectly, in one or more related transactions, effects any Fundamental Transaction, each share of Preferred Stock shall, automatically and without any action on the part of the Holder, be converted at the effective time of such Fundamental Transaction into the right to receive the same consideration to be paid in respect of the outstanding shares of Common Stock as if such share of Preferred Stock had been converted into Common Stock immediately prior to the effective time of such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of this Preferred Stock). If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction (“Alternate Consideration”), then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock upon the effectiveness of such Fundamental Transaction.

(e) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(f) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any Fundamental Transaction to which the Corporation is a party, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) if applicable, the date on which a record is to be taken for the purpose of determining holders of Common Stock entitled to vote on or otherwise approve such transaction, (y) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined; or (z) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder shall remain entitled to convert any portion of this Preferred Stock during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein. In addition, if the Corporation shall become aware of any Fundamental Transaction to which it is not a party, the Corporation shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, not more than ten (10) calendar days after it becomes aware of such Fundamental Transaction, a notice identifying the Fundamental Transaction and any other material information with respect thereto available to the Corporation.

Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile or email, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the following address:

Invitae Corporation
1400 16th Street
San Francisco, California 94103
Attention: Chief Financial Officer

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

Pillsbury Winthrop Shaw Pittman, LLP
12255 El Camino Real, Suite 300
San Diego, California 92130
Attention: Mike Hird

or such other address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 8. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile or email, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, email address or mailing address of such Holder appearing on the books of the Corporation, or if no such facsimile number, email address or mailing address appears on the books of the Corporation, at the

principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile or email (to the extent authorized) prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile or email (to the extent authorized) on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation and, in each case, customary and reasonable indemnity, if requested.

(c) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

(d) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

(e) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(f) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(h) Status of Converted Preferred Stock. If any shares of Preferred Stock shall be converted, repurchased or otherwise reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A Convertible Preferred Stock.

RESOLVED, FURTHER, that the Chairman, the chief executive officer, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Delaware law.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 31st day of July, 2017.

Invitae Corporation

By: /s/ Sean George, Ph.D.

Name: Sean George, Ph.D.

Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO
CONVERT SHARES OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock indicated below into shares of common stock, \$0.0001 par value per share (the "Common Stock"), of Invitae Corporation, a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation in accordance with the Purchase Agreement. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion:

Number of shares of Preferred Stock owned prior to Conversion:

Number of shares of Preferred Stock to be Converted:

Stated Value of shares of Preferred Stock to be Converted:

Number of shares of Common Stock to be Issued:

Applicable Conversion Price:

Number of shares of Preferred Stock subsequent to Conversion:

Address for Delivery:

HOLDER:

By: _____

Name:

Title:

SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of July 31, 2017 by and among Invitae Corporation, a Delaware corporation (the “Company”), and the Investors identified on Exhibit A attached hereto (each an “Investor” and collectively the “Investors”).

RECITALS

A. The Company and the Investors are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the provisions of Section 4(a)(2) of the 1933 Act (as defined below) and Rule 506 of Regulation D (“Regulation D”) promulgated by the SEC (as defined below) thereunder;

B. The Investors wish to purchase from the Company, and the Company wishes to sell and issue to the Investors, upon the terms and subject to the conditions stated in this Agreement, an aggregate of 5,188,235 shares (the “Shares”) of the Company’s Common Stock, \$0.0001 par value per share (the “Common Stock”) at a purchase price of \$8.50 per share;

C. The Company is also offering to certain Investors the opportunity, in lieu of purchasing Shares, to purchase an aggregate of 3,458,823 shares (the “Preferred Shares”) of the Company’s Series A Convertible Preferred Stock, \$0.0001 par value per share, having the relative rights, preferences, limitations and powers set forth in the Certificate of Designation in the form attached hereto as Exhibit B (the “Certificate of Designation”) and convertible into shares of Common Stock (the “Conversion Shares”) at a conversion price equal to \$8.50, subject to adjustment as provided therein at a purchase price of \$8.50 per share; and

D. Contemporaneously with the sale of the Securities, the parties hereto will execute and deliver a Registration Rights Agreement, in the form attached hereto as Exhibit C (the “Registration Rights Agreement”), pursuant to which the Company will agree to provide certain registration rights in respect of the Shares and the Conversion Shares under the 1933 Act, and the rules and regulations promulgated thereunder, and applicable state securities laws.

In consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to those terms defined above and elsewhere in this Agreement, for the purposes of this Agreement, the following terms shall have the meanings set forth below:

“Affiliate” means, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries Controls, is controlled by, or is under common Control with, such Person.

“Business Day” means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

“Closing” has the meaning set forth in Section 3.1.

“Closing Date” has the meaning set forth in Section 3.1.

“Common Stock Equivalents” means any securities of the Company which would entitle the holder thereof to acquire at any time Common Stock, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company Covered Person” means, with respect to the Company as an “issuer” for purposes of Rule 506 promulgated under the 1933 Act, any Person listed in the first paragraph of Rule 506(d)(1).

“Company Intellectual Property” has the meaning set forth in Section 4.13.

“Company’s Knowledge” means the actual knowledge of the executive officers (as defined in Rule 405 under the 1933 Act) of the Company.

“Control” (including the terms “controlling”, “controlled by” or “under common control with”) means the possession, direct or indirect, of the 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.

“Disclosure Schedule” has the meaning set forth in Section 4.

“Environmental Laws” has the meaning set forth in Section 4.14.

“GAAP” has the meaning set forth in Section 4.16.

“Losses” has the meaning set forth in Section 8.2.

“Material Adverse Effect” means a material adverse effect on (i) the assets, liabilities, results of operations, financial condition or business of the Company and its subsidiaries taken as a whole, (ii) the legality or enforceability of any of the Transaction Documents or (iii) the ability of the Company to perform its obligations under the Transaction Documents, except that for purposes of Section 6.1(j) of this Agreement, in no event shall a change in the market price of the Common Stock alone constitute a “Material Adverse Effect”; provided that the foregoing exception shall not apply to the underlying causes giving rise to or contributing to such change or prevent any of such underlying causes from being taken into account in determining whether a Material Adverse Effect has occurred.

“Material Contract” means any contract, instrument or other agreement to which the Company is a party or by which it is bound that has been filed or was required to have been filed as an exhibit to the SEC Filings pursuant to Item 601(b)(4) or Item 601(b)(10) of Regulation S-K.

“NYSE” means The New York Stock Exchange.

“Person” means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

“Placement Agents” means Cowen and Company, LLC and Leerink Partners LLC.

“Press Release” has the meaning set forth in Section 9.7.

“Principal Trading Market” means the Trading Market on which the Common Stock is primarily listed on and quoted for trading, which, as of the date of this Agreement and the Closing Date, shall be the NYSE.

“Registration Rights Agreement” has the meaning set forth in the recitals to this Agreement.

“Regulation D” has the meaning set forth in the recitals to this Agreement.

“Required Investors” has the meaning set forth in the Registration Rights Agreement.

“SEC Filings” has the meaning set forth in Section 4.

“Securities” means the Shares, the Preferred Shares and the Conversion Shares.

“Shares” has the meaning set forth in the recitals to this Agreement.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the 1934 Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

“Trading Day” means (i) a day on which the Common Stock is listed or quoted and traded on its Principal Trading Market (other than the OTC Bulletin Board), or (ii) if the Common Stock is not listed on a Trading Market (other than the OTC Bulletin Board), a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not quoted on any Trading Market, a day on which the Common Stock is quoted in the over-the-counter market as reported in the “pink sheets” by OTC Markets Group Inc. (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

“Trading Market” means whichever of the New York Stock Exchange, the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or the OTC Bulletin Board on which the Common Stock is listed or quoted for trading on the date in question.

“Transfer Agent” has the meaning set forth in Section 7.5(a).

“Transaction Documents” means this Agreement, the Registration Rights Agreement and the Certificate of Designation.

“SEC” means the U.S. Securities and Exchange Commission.

“1933 Act” means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“1934 Act” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

2. Purchase and Sale of the Securities. On the Closing Date, upon the terms and subject to the conditions set forth herein, the Company will issue and sell, and the Investors will purchase, severally and not jointly, for a price per share of \$8.50, the number of Shares and Preferred Shares in the respective amounts set forth opposite the name of such Investor as indicated on Exhibit A attached hereto.

3. Closing.

3.1 Upon the satisfaction of the conditions set forth in Section 6, the completion of the purchase and sale of the Shares and the Preferred Shares (the “Closing”) shall occur remotely via exchange of documents and signatures at a time (the “Closing Date”) to be agreed to by the Company and the Investors but in no event later than the third Business Day after the date hereof, and of which the Investors will be notified in advance by the Placement Agents.

3.2 On the Closing Date, each Investor shall deliver or cause to be delivered to the Company, via wire transfer of immediately available funds pursuant to the wire instructions delivered to such Investor by the Company on or prior to the Closing Date, an amount equal to the aggregate purchase price to be paid by the Investor for the Shares and the Preferred Shares to be acquired by it as set forth opposite the name of such Investor under the heading “Aggregate Purchase Price” on Exhibit A attached hereto.

3.3 At or before the Closing, the Company shall deliver or cause to be delivered to each Investor a number of Shares and Preferred Shares, registered in the name of the Investor (or its nominee in accordance with its delivery instructions), equal to the number of Shares and Preferred Shares set forth opposite the name of such Investor on Exhibit A attached hereto. The Shares and Preferred Shares shall be delivered via a book-entry record through the Company’s transfer agent on a “delivery versus payment” basis.

4. Representations and Warranties of the Company. References in this Agreement to the “Company” refer to Invitae Corporation and its wholly owned subsidiaries, except as otherwise indicated herein or as the context otherwise requires. The Company hereby represents and warrants to the Investors that, except (i) as contemplated by the Transaction Documents, (ii) as set forth in Schedule 4 hereto (the “Disclosure Schedule”) or (iii) as described in the Company’s filings with the SEC pursuant to the 1934 Act (the “SEC Filings”) (excluding any disclosures set forth under the headings “Risk Factors,” or disclosure of risks set forth in any “forward-looking statements” disclaimer, or disclosures in any other statements that are similarly cautionary or predictive in nature; it being understood that any factual information contained within such headings, disclosure or statements shall not be excluded), which qualify these representations and warranties in their entirety, as follows.

4.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own or lease its properties. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification or leasing necessary unless the failure to so qualify has not had and would not reasonably be expected to have a Material Adverse Effect. Invitae Canada Inc., Patient Crossroads, Inc., and Ommdom Inc. are the only subsidiaries of the Company and each is wholly-owned by the Company. Each of the Company’s subsidiaries is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite power and authority to carry on its business as now conducted and to own or lease its properties. Each of the Company’s subsidiaries is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification or leasing necessary unless the failure to so qualify has not had and would not reasonably be expected to have a Material Adverse Effect. All of the issued and outstanding capital stock of the Company’s subsidiaries has been duly authorized and validly issued, is fully paid and nonassessable and is owned by the Company free and clear of any security interest, mortgage, pledge, lien, encumbrance or adverse claim.

4.2 Authorization. The Company has the requisite corporate power and authority and, except for filing the Certificate of Designation with the Secretary of State of the State of Delaware, has taken all requisite corporate action necessary for, and no further action on the part of the Company, its officers, directors and stockholders is necessary for, (i) the authorization, execution and delivery of the Transaction Documents, (ii) the authorization of the performance of all obligations of the Company hereunder or thereunder, and (iii) the authorization, issuance (or reservation for issuance with respect to the Conversion Shares) and delivery of the Shares and the Preferred Shares. The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors’ rights generally and to general equitable principles.

4.3 Capitalization. The Company is authorized under its Certificate of Incorporation to issue 400,000,000 shares of Common Stock and 20,000,000 shares of preferred stock. The Company’s disclosure of its issued and outstanding capital stock in its most recent SEC Filing containing such disclosure was accurate in all material respects as of the date indicated in such SEC Filing. All of the issued and outstanding shares of the Company’s capital stock have been duly authorized and validly issued and are fully paid and nonassessable; none of such shares were issued in violation of any pre-emptive rights; and such shares were issued in compliance in all material respects with applicable state and federal securities law and any rights of third parties. No Person is entitled to pre-emptive or similar statutory or contractual rights with respect to the issuance by the Company of any securities of the Company, including, without limitation, the Securities. There are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which the Company is or may be obligated to issue any equity securities of any kind, except as contemplated by this Agreement. Except for the Registration Rights Agreement, there are no voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the securityholders of the Company relating to the securities of the Company held by them. Except as provided in the Registration Rights Agreement, and except as provided in that certain Fifth Amended and Restated Investors’ Rights Agreement, dated as of August 26, 2014, as amended, among the Company and certain investors signatory thereto, no Person has the right to require the Company to register any securities of the Company under the 1933 Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person.

The issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any other Person (other than the Investors) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security.

The Company does not have outstanding stockholder purchase rights or “poison pill” or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

4.4 Valid Issuance. The Shares have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and shall be free and clear of all encumbrances and restrictions (other than those created by the Investors), except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws. Upon the filing of the Certificate of Designation with the Secretary of State of Delaware, the Preferred Shares will have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and shall be free and clear of all encumbrances and restrictions (other than those created by the Investors), except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws. Upon the due conversion of the Preferred Shares, the Conversion Shares will be validly issued, fully paid and non-assessable free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws and except for those created by the Investors. The Company has reserved a sufficient number of shares of Common Stock for issuance upon the conversion of the Preferred Shares.

4.5 Consents. Except for the filing of the Certificate of Designation with the Secretary of State of Delaware, the execution, delivery and performance by the Company of the Transaction Documents and the offer, issuance and sale of the Securities require no consent of, action by or in respect of, or filing with, any Person, governmental body, agency, or official other than (a) filings that have been made pursuant to applicable state securities laws, (b) post-sale filings pursuant to applicable state and federal securities laws, (c) filings pursuant to the rules and regulations of NYSE and (d) filing of the registration statement required to be filed by the Registration Rights Agreement, each of which the Company has filed or undertakes to file within the applicable time. Subject to the accuracy of the representations and warranties of each Investor set forth in Section 5 hereof, the Company has taken all action necessary to exempt (i) the issuance and sale of the Securities, (ii) the issuance of the Conversion Shares upon due conversion of the Preferred Shares and (iii) the other transactions contemplated by the Transaction Documents from the provisions of any stockholder rights plan or other “poison pill” arrangement, any anti-takeover, business combination or control share law or statute binding on the Company or to which the Company or any of its assets and properties is subject that is or could reasonably be expected to become applicable to the Investors as a result of the transactions contemplated hereby, including without limitation, the issuance of the Securities and the ownership, disposition or voting of the Securities by the Investors or the exercise of any right granted to the Investors pursuant to this Agreement or the other Transaction Documents.

4.6 No Material Adverse Change. Since March 31, 2017, except as described in the SEC Filings, there has not been:

(i) any change in the consolidated assets, liabilities, financial condition or operating results of the Company from that reflected in the financial statements included in the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2017, except for changes in the ordinary course of business which have not had and would not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate;

(ii) any declaration or payment by the Company of any dividend, or any authorization or payment by the Company of any distribution, on any of the capital stock of the Company, or any redemption or repurchase by the Company of any securities of the Company;

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- (iii) any material damage, destruction or loss, whether or not covered by insurance, to any assets or properties of the Company;
 - (iv) any waiver, not in the ordinary course of business, by the Company of a material right or of a material debt owed to it;
 - (v) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and which is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted);
 - (vi) any change or amendment to the Company's Restated Certificate of Incorporation or Amended and Restated Bylaws, or material change to any material contract or arrangement by which the Company is bound or to which any of its assets or properties is subject;
 - (vii) any material labor difficulties or, to the Company's Knowledge, labor union organizing activities with respect to employees of the Company;
 - (viii) any material transaction entered into by the Company other than in the ordinary course of business;
 - (ix) the loss of the services of any key employee, or material change in the composition or duties of the senior management of the Company;
- or
- (x) any other event or condition of any character that has had or would reasonably be expected to have a Material Adverse Effect.

4.7 SEC Filings. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the 1934 Act, including pursuant to Section 13(a) or 15(d) thereof, for the one year preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material). At the time of filing thereof, such filings complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC thereunder and did not 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 made therein, in the light of the circumstances under which they were made, not misleading.

4.8 No Conflict, Breach, Violation or Default. The execution, delivery and performance of the Transaction Documents by the Company and the issuance and sale of the Securities in accordance with the provisions thereof will not, except for such violations, conflicts or defaults as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) conflict with or result in a breach or violation of (a) any of the terms and provisions of, or constitute a default under, the Company's Restated Certificate of Incorporation or the Company's Amended and Restated Bylaws, both as in effect on the date hereof (true and complete copies of which have been made available to the Investors through the Electronic Data Gathering, Analysis, and Retrieval system (the "EDGAR system")), or (b) assuming the accuracy of the representations and warranties in Section 5, any applicable statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or its subsidiaries, or any of their assets or properties, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien, encumbrance or other adverse claim upon any of the properties or assets of the Company or its subsidiaries or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any Material Contract

4.9 Tax Matters. The Company and its subsidiaries have timely prepared and filed all tax returns required to have been filed by them with all appropriate governmental agencies and timely paid all taxes shown thereon or otherwise owed by them. The charges, accruals and reserves on the books of the Company in respect of taxes for all fiscal periods are adequate in all material respects, and there are no material unpaid assessments against the Company nor, to the Company's Knowledge, any basis for the assessment of any additional

taxes, penalties or interest for any fiscal period or audits by any federal, state or local taxing authority except for any assessment which is not material to the Company. All taxes and other assessments and levies that the Company is required to withhold or to collect for payment have been duly withheld and collected and paid to the proper governmental entity or third party when due. There are no tax liens or claims pending or, to the Company's Knowledge, threatened against the Company or any of its assets or property. There are no outstanding tax sharing agreements or other such arrangements between the Company and any other corporation or entity.

4.10 Title to Properties. The Company and each of its subsidiaries has good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, encumbrances and defects, except such as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; and the Company and each of its subsidiaries hold any leased real or personal property under valid and enforceable leases with no exceptions, except such as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

4.11 Certificates, Authorities and Permits. The Company possesses adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by it, except where failure to so possess would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. The Company has not received any written notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that would reasonably be expected to have a Material Adverse Effect, individually or in the aggregate, on the Company.

4.12 Labor Matters.

(a) The Company is not party to or bound by any collective bargaining agreements or other agreements with labor organizations. To the Company's Knowledge, the Company has not violated in any material respect any laws, regulations, orders or contract terms affecting the collective bargaining rights of employees or labor organizations, or any laws, regulations or orders affecting employment discrimination, equal opportunity employment, or employees' health, safety, welfare, wages and hours.

(b) No material labor dispute with the employees of the Company, or with the employees of any principal supplier, manufacturer, customer or contractor of the Company, exists or, to the Company's Knowledge, is threatened or imminent.

4.13 Intellectual Property. The Company owns, possesses, licenses or has other rights to use, the patents and patent applications, copyrights, trademarks, service marks, trade names, service names and trade secrets described in the SEC Filings as necessary or material for use in connection with its business and which the failure to so have would have or reasonably be expected to result in a Material Adverse Effect (collectively, the "Company Intellectual Property"). There is no pending or, to the Company's Knowledge, threatened action, suit, proceeding or claim by any Person that the Company's business as now conducted infringes or otherwise violates any patent, trademark, copyright, trade secret or other proprietary rights of another. To the Company's Knowledge, there is no existing infringement by another Person of any of the Company Intellectual Property that would have or would reasonably be expected to have a Material Adverse Effect. The Company has taken reasonable security measures to protect the secrecy, confidentiality and value of all of the Company Intellectual Property, except where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.14 Environmental Matters. The Company is not in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "Environmental Laws"), has not released any hazardous substances regulated by Environmental Law onto any real property that it owns or operates, and has not received any written notice or claim it is liable for any off-site disposal or contamination pursuant to any Environmental Laws, which violation, release, notice, claim, or liability would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, and to the Company's Knowledge, there is no pending or threatened investigation that would reasonably be expected to lead to such a claim.

4.15 Legal Proceedings. There are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or its subsidiaries is or may reasonably be expected to become a party or to which any property of the Company or its subsidiaries is or may reasonably be expected to become the subject that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

4.16 Financial Statements. The financial statements included in each SEC Filing comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing (or to the extent corrected by a subsequent restatement) and present fairly, in all material respects, the consolidated financial position of the Company as of the dates presented and its consolidated results of operations and cash flows for the periods presented, subject in the case of unaudited financial statements to normal, year-end audit adjustments, and such consolidated financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”) (except as may be disclosed therein or in the notes thereto, and except that the unaudited financial statements may not contain all footnotes required by GAAP, and, in the case of quarterly financial statements, except as permitted by Form 10-Q under the 1934 Act). Except as set forth in the financial statements of the Company included in the SEC Filings filed prior to the date hereof, the Company has not incurred any liabilities, contingent or otherwise, except those incurred in the ordinary course of business, consistent (as to amount and nature) with past practices since the date of such financial statements, none of which, individually or in the aggregate, have had or would reasonably be expected to have a Material Adverse Effect.

4.17 Insurance Coverage. The Company maintains in full force and effect insurance coverage that is customary for comparably situated companies for the business being conducted and properties owned or leased by the Company, and the Company reasonably believes such insurance coverage to be adequate against all liabilities, claims and risks against which it is customary for comparably situated companies to insure.

4.18 Compliance with NYSE Continued Listing Requirements. The Company is in compliance with applicable NYSE continued listing requirements. There are no proceedings pending or, to the Company’s Knowledge, threatened against the Company relating to the continued listing of the Common Stock on NYSE and the Company has not received any notice of, nor to the Company’s Knowledge is there any reasonable basis for, the delisting of the Common Stock from NYSE.

4.19 Brokers and Finders. Other than the Placement Agents, no Person will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company. No Investor shall have any obligation with respect to any fees, or with respect to any claims made by or on behalf of other Persons for fees, in each case of the type contemplated by this Section 4.19 that may be due in connection with the transactions contemplated by this Agreement or the Transaction Documents.

4.20 No Directed Selling Efforts or General Solicitation. Neither the Company nor any Person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D) in connection with the offer or sale of any of the Securities.

4.21 No Integrated Offering. Neither the Company nor its subsidiaries nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any Company security, under circumstances that would adversely affect reliance by the Company on Section 4(a)(2) for the exemption from registration for the transactions contemplated hereby or would require registration of the Securities under the 1933 Act.

4.22 Private Placement. Assuming the accuracy of the representations and warranties of the Investors set forth in Section 5, the offer and sale of the Securities to the Investors as contemplated hereby is exempt from the registration requirements of the 1933 Act. The issuance and sale of the Securities does not contravene the rules and regulations of NYSE.

4.23 Questionable Payments. Neither the Company nor its subsidiaries nor, to the Company's Knowledge, any of their current or former directors, officers, employees, agents or other Persons acting on behalf of the Company or its subsidiaries, has on behalf of the Company or its subsidiaries in connection with its business: (a) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (b) made any direct or indirect unlawful payments to any governmental officials or employees from corporate funds; (c) established or maintained any unlawful or unrecorded fund of corporate monies or other assets which is in violation of law; (d) made any false or fictitious entries on the books and records of the Company; or (e) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment of any nature.

4.24 Transactions with Affiliates. None of the executive officers or directors of the Company and, to the Company's Knowledge, none of the employees of the Company is presently a party to any transaction with the Company (other than as holders of equity awards, and for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the Company's Knowledge, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

4.25 Internal Controls. The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the 1934 Act), which are designed to ensure that material information relating to the Company, including its subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others within those entities. Since the end of the Company's most recent audited fiscal year, there have been no significant deficiencies or material weaknesses in the Company's internal control over financial reporting (whether or not remediated) and no change in the Company's internal control over financial reporting that has materially affected, or would reasonably be expected to materially affect, the Company's internal control over financial reporting. The Company is not aware of any change in its internal controls over financial reporting that has occurred during its most recent fiscal quarter that has materially affected, or would reasonably be expected to materially affect, the Company's internal control over financial reporting.

4.26 Disclosures. Neither the Company nor any Person acting on its behalf has provided the Investors or their agents or counsel with any information with respect to the transactions contemplated hereby that constitutes or would reasonably be expected to constitute material, non-public information concerning the Company or its subsidiaries, other than with respect to the transactions contemplated hereby and as described on the Disclosure Schedule, which will be disclosed in the Press Release (as defined below). The SEC Filings and the slide presentation presented to the Investors by the Company in connection with the offer and sale of the Shares, when considered together, do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The Company understands and confirms that the Investors will rely on the foregoing representations in effecting transactions in securities of the Company.

4.27 Required Filings. Except for the transactions contemplated by this Agreement, including the acquisition of the Securities contemplated hereby, no event or circumstance has occurred or information exists with respect to the Company or its business, properties, operations or financial condition, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed (assuming for this purpose that the SEC Filings are being incorporated by reference into an effective registration statement filed by the Company under the 1933 Act).

4.28 Investment Company. The Company is not required to be registered as, and is not an Affiliate of, and immediately following the Closing will not be required to register as, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

4.29 Manipulation of Price. The Company has not, and, to the Company's Knowledge, no Person acting on its behalf has taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities.

4.30 Anti-Bribery and Anti-Money Laundering Laws. Each of the Company, its subsidiaries and any of their respective officers, directors, supervisors, managers, agents, or employees, are and have at all times been in compliance with and its participation in the offering will not violate: (A) anti-bribery laws, including but not limited to, any applicable law, rule, or regulation of any locality, including but not limited to any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, or any other law, rule or regulation of similar purposes and scope or (B) anti-money laundering laws, including but not limited to, applicable federal, state, international, foreign or other laws, regulations or government guidance regarding anti-money laundering, including, without limitation, Title 18 U.S. Code section 1956 and 1957, the Patriot Act, the Bank Secrecy Act, and international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, all as amended, and any executive order, directive, or regulation pursuant to the authority of any of the foregoing, or any orders or licenses issued thereunder.

4.31 Compliance. The Company is not (i) in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company under), nor has the Company received written notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) in violation of any judgment, decree or order of any court, arbitrator or governmental body specifically naming the Company or (iii) in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as would not have or reasonably be expected to result in a Material Adverse Effect.

4.32 No Bad Actors. No “bad actor” disqualifying event described in Rule 506(d)(1)(i)-(viii) of the 1933 Act (a “Disqualification Event”) is applicable to the Company or, to the Company’s knowledge, any Company Covered Person, except (i) for a Disqualification Event as to which Rule 506(d)(2)(ii—iv) or (d)(3) is applicable and (ii) no such representation is made with respect to the Placement Agents, or any of their respective general partners, managing members, directors, executive officers or other officers.

5. Representations and Warranties of the Investors. Each of the Investors hereby severally, and not jointly, represents and warrants to the Company that:

5.1 Organization and Existence. Such Investor is a validly existing corporation, limited partnership or limited liability company and has all requisite corporate, partnership or limited liability company power and authority to enter into and consummate the transactions contemplated by the Transaction Documents and to carry out its obligations hereunder and thereunder, and to invest in the Securities pursuant to this Agreement.

5.2 Authorization. The execution, delivery and performance by such Investor of the Transaction Documents to which such Investor is a party have been duly authorized and each has been duly executed and when delivered will constitute the valid and legally binding obligation of such Investor, enforceable against such Investor in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors’ rights generally and to general equitable principles.

5.3 Purchase Entirely for Own Account. The Securities to be received by such Investor hereunder will be acquired for such Investor’s own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the 1933 Act, and such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the 1933 Act without prejudice, however, to such Investor’s right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal and state securities laws. Nothing contained herein shall be deemed a representation or warranty by such Investor to hold the Securities for any period of time. Such Investor is not a broker-dealer registered with the SEC under the 1934 Act or an entity engaged in a business that would require it to be so registered.

5.4 Investment Experience. Such Investor acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

5.5 Disclosure of Information. Such Investor has had an opportunity to receive, review and understand all information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities, and has conducted and completed its own independent due diligence. Such Investor acknowledges that copies of the SEC Filings are available on the EDGAR system. Based on the information such Investor has deemed appropriate, and without reliance upon any Placement Agent, it has independently made its own analysis and decision to enter into the Transaction Documents. Such Investor is relying exclusively on its own sources of information, investment analysis and due diligence (including professional advice it deems appropriate) with respect to the execution, delivery and performance of the Transaction Documents, the Securities and the business, condition (financial and otherwise), management, operations, properties and prospects of the Company, including but not limited to all business, legal, regulatory, accounting, credit and tax matters. Neither such inquiries nor any other due diligence investigation conducted by such Investor shall modify, limit or otherwise affect such Investor's right to rely on the Company's representations and warranties contained in this Agreement.

5.6 Restricted Securities. Such Investor understands that the Securities are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the 1933 Act only in certain limited circumstances.

5.7 Legends. It is understood that, except as provided below, certificates evidencing the Securities may bear the following or any similar legend:

(a) "The securities represented hereby have not been registered with the Securities and Exchange Commission or the securities commission of any state in reliance upon an exemption from registration under the Securities Act of 1933, as amended, and, accordingly, may not be transferred unless (i) such securities have been registered for sale pursuant to the Securities Act of 1933, as amended, (ii) such securities may be sold pursuant to Rule 144, or (iii) the Company has received an opinion of counsel reasonably satisfactory to it that such transfer may lawfully be made without registration under the Securities Act of 1933, as amended."

(b) If required by the authorities of any state in connection with the issuance of sale of the Securities, the legend required by such state authority.

5.8 Accredited Investor. Such Investor is an (a) "accredited investor" within the meaning of Rule 501(a) (1), (2), (3) or (7) under the 1933 Act and (b) an "Institutional Account" as defined in FINRA Rule 4512(c). Such Investor has executed and delivered to the Company a questionnaire in substantially the form attached hereto as Exhibit D (the "Investor Questionnaire"), which such Investor represents and warrants is true, correct and complete. Such Investor is a sophisticated institutional investor with sufficient knowledge and experience in investing in private equity transactions to properly evaluate the risks and merits of its purchase of the Securities.

5.9 Placement Agents. Such Investor hereby acknowledges and agrees that (a) each of the Placement Agents is acting solely as placement agent in connection with the execution, delivery and performance of the Transaction Documents and is not acting as an underwriter or in any other capacity and is not and shall not be construed as a fiduciary for such Investor, the Company or any other person or entity in connection with the execution, delivery and performance of the Transaction Documents, (b) no Placement Agent has made or will make any representation or warranty, whether express or implied, of any kind or character, or has provided any advice or recommendation in connection with the execution, delivery and performance of the Transaction Documents, (c) no Placement Agent will have any responsibility with respect to (i) any representations, warranties or agreements made by any person or entity under or in connection with the execution, delivery and performance of the Transaction Documents, or the execution, legality, validity or enforceability (with respect to any person) thereof, or (ii) the business, affairs, financial condition, operations, properties or prospects of, or any other matter concerning the Company, and (d) no Placement Agent will have any liability or obligation (including without limitation, for or with

respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by such Investor, the Company or any other person or entity), whether in contract, tort or otherwise, to such Investor, or to any person claiming through it, in respect of the execution, delivery and performance of the Transaction Documents.

5.10 No General Solicitation. Such Investor did not learn of the investment in the Securities as a result of any general solicitation or general advertising.

5.11 Brokers and Finders. No Person will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of such Investor.

5.12 Short Sales and Confidentiality. Other than consummating the transactions contemplated hereunder, such Investor has not, nor has any Person acting on behalf of or pursuant to any understanding with such Investor, directly or indirectly executed any purchases or sales, including Short Sales, of the securities of the Company or of any other entity on the basis of confidential information provided by the Company or a Placement Agent to such Investor transaction (including the existence and terms of this transaction and other non-public information), (the “Confidential Information”) during the period commencing as of the time that such Investor was first contacted by the Company, a Placement Agent or any other Person regarding the transactions contemplated hereby and ending immediately prior to the date hereof. Notwithstanding the foregoing, in the case of an Investor that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Investor’s assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Investor’s assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement. Other than to other Persons party to this Agreement, such Investor has maintained and will continue to maintain the confidentiality of the Confidential Information, and such Investor agrees that it will not use any Confidential Information in violation of applicable securities laws.

5.13 No Government Recommendation or Approval. Such Investor understands that no United States federal or state agency, or similar agency of any other country, has reviewed, approved, passed upon, or made any recommendation or endorsement of the Company or the purchase of the Securities.

5.14 No Intent to Effect a Change of Control. Such Investor has no present intent to effect a “change of control” of the Company as such term is understood under the rules promulgated pursuant to Section 13(d) of the 1934 Act.

5.15 No Rule 506 Disqualifying Activities. Such Investor has not taken any of the actions set forth in, and is not subject to, the disqualification provisions of Rule 506 (d)(1) of the 1933 Act.

5.16 Residency. Such Investor’s office in which its investment decision with respect to the Securities was made is located at the address immediately below such Investor’s name on its signature page hereto.

5.17 No Conflicts. The execution, delivery and performance by such Investor of the Transaction Documents and the consummation by such Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Investor or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Investor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Investor to perform its obligations hereunder.

6. Conditions to Closing.

6.1 Conditions to the Investors' Obligations. The obligation of each Investor to purchase Shares and Preferred Shares at the Closing is subject to the fulfillment to such Investor's satisfaction, on or prior to the Closing Date, of the following conditions, any of which may be waived by such Investor (as to itself only):

(a) The representations and warranties made by the Company in Section 4 hereof shall be true and correct in all material respects as of the date hereof and as of the Closing Date, as though made on and as of such date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date. The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Closing Date.

(b) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary for consummation of the purchase and sale of the Securities and the consummation of the other transactions contemplated by the Transaction Documents, all of which shall be in full force and effect.

(c) The Company shall have executed and delivered the Registration Rights Agreement.

(d) The Company shall have filed with NYSE a Supplemental Listing Application for the listing of the Shares and the Conversion Shares, and NYSE shall have raised no objection to the consummation of the transactions contemplated by the Transaction Documents.

(e) The Certificate of Designation shall have been filed with the Secretary of State of Delaware and shall have become effective, and the Company shall have provided a filed copy thereof to any Investor purchasing Preferred Shares.

(f) No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, shall have been issued, and no action or proceeding shall have been instituted by any governmental authority, enjoining or preventing the consummation of the transactions contemplated hereby or in the other Transaction Documents.

(g) The Company shall have delivered a Certificate, executed on behalf of the Company by its Chief Executive Officer or its Chief Financial Officer, dated as of the Closing Date, certifying to the fulfillment of the conditions specified in subsections (a), (b), (d), (e), (f), (j) and (k) of this Section 6.1.

(h) The Company shall have delivered a Certificate, executed on behalf of the Company by its Secretary, dated as of the Closing Date, certifying the resolutions adopted by the Board of Directors of the Company approving the transactions contemplated by this Agreement and the other Transaction Documents and the issuance of the Securities, certifying the current versions of the Certificate of Incorporation and Bylaws of the Company and certifying as to the signatures and authority of persons signing the Transaction Documents and related documents on behalf of the Company.

(i) The Investors shall have received an opinion from Pillsbury Winthrop Shaw Pittman LLP, the Company's counsel, dated as of the Closing Date, in form and substance reasonably acceptable to the Investors and addressing such legal matters as the Investors may reasonably request.

(j) There shall have been no Material Adverse Effect with respect to the Company since the date hereof.

(k) No stop order or suspension of trading shall have been imposed by NYSE, the SEC or any other governmental or regulatory body with respect to public trading in the Common Stock.

6.2 Conditions to Obligations of the Company. The Company's obligation to sell and issue Securities at the Closing is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing Date of the following conditions, any of which may be waived by the Company:

(a) The representations and warranties made by the Investors in Section 5 hereof shall be true and correct as of the date hereof and on the Closing Date with the same force and effect as if they had been made on and as of said date. The Investors shall have performed in all material respects all obligations and covenants herein required to be performed by them on or prior to the Closing Date.

(b) The Investors shall have executed and delivered the Registration Rights Agreement and each Investor Questionnaire.

(c) Any Investor purchasing Securities at the Closing shall have paid in full its purchase price to the Company.

6.3 Termination of Obligations to Effect Closing; Effects.

(a) The obligations of the Company, on the one hand, and the Investors, on the other hand, to effect the Closing shall terminate as follows:

(i) Upon the mutual written consent of the Company and Investors that agreed to purchase a majority of the Securities to be issued and sold pursuant to this Agreement;

(ii) By the Company if any of the conditions set forth in Section 6.2 shall have become incapable of fulfillment, and shall not have been waived by the Company;

(iii) By an Investor (with respect to itself only) if any of the conditions set forth in Section 6.1 shall have become incapable of fulfillment, and shall not have been waived by the Investor; or

(iv) By either the Company or any Investor (with respect to itself only) if the Closing has not occurred on or prior to August 15, 2017;

provided, however, that, except in the case of clause (i) above, the party seeking to terminate its obligation to effect the Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement or the other Transaction Documents if such breach has resulted in the circumstances giving rise to such party's seeking to terminate its obligation to effect the Closing.

(b) In the event of termination by the Company or any Investor of its obligations to effect the Closing pursuant to this Section 6.3, written notice thereof shall be given to the other Investors by the Company and the other Investors shall have the right to terminate their obligations to effect the Closing upon written notice to the Company and the other Investors. Nothing in this Section 6.3 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

7. Covenants and Agreements of the Company.

7.1 Reservation of Common Stock. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of providing for the conversion of the Preferred Shares, such number of shares of Common Stock as shall from time to time equal the number of shares sufficient to permit the conversion of the Preferred Shares issued pursuant to this Agreement in accordance with their respective terms.

7.2 No Conflicting Agreements. The Company will not take any action, enter into any agreement or make any commitment that would conflict or interfere in any material respect with the Company's obligations to the Investors under the Transaction Documents.

7.3 NYSE Listing. The Company will use commercially reasonable efforts to continue the listing and trading of its Common Stock on NYSE and, in accordance therewith, will use commercially reasonable efforts to comply in all material respects with the Company's reporting, filing and other obligations under the bylaws or rules of such market or exchange, as applicable.

7.4 Termination of Covenants. The provisions of Sections 7.2 and 7.3 shall terminate and be of no further force and effect on the date on which the Company's obligations under the Registration Rights Agreement to register or maintain the effectiveness of any registration covering the Registrable Securities (as such term is defined in the Registration Rights Agreement) shall terminate.

7.5 Removal of Legends.

(a) In connection with any sale, assignment, transfer or other disposition of the Shares by an Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable shares and upon compliance by the Investor with the requirements of this Agreement, if requested by the Investor, the Company shall cause the transfer agent for the Common Stock (the "Transfer Agent") to remove any restrictive legends related to the book entry account holding such Shares and make a new, unlegended entry for such book entry Shares sold or disposed of without restrictive legends, provided that the Company has received from the Investor customary representations and other documentation reasonably acceptable to the Company in connection therewith. Subject to receipt from the Investor by the Company and the Transfer Agent of customary representations and other documentation reasonably acceptable to the Company and the Transfer Agent in connection therewith, upon the earliest of such time as the Shares (i) have been sold or transferred pursuant to an effective registration statement, (ii) have been sold pursuant to Rule 144, or (iii) are eligible for resale under Rule 144(b)(1) or any successor provision (such earliest date, the "Effective Date"), the Company shall (A) deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall make a new, unlegended entry for such book entry Shares, and (B) cause its counsel to deliver to the Transfer Agent one or more opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act if required by the Transfer Agent to effect the removal of the legend in accordance with the provisions of this Agreement. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 7.5, it will, within three Trading Days of the delivery by an Investor to the Company or the Transfer Agent of a certificate representing shares issued with a restrictive legend and receipt from the Investor by the Company and the Transfer Agent of customary representations and other documentation reasonably acceptable to the Company and the Transfer Agent in connection therewith, deliver or cause to be delivered to such Investor a certificate representing such Shares that is free from all restrictive and other legends. Shares subject to legend removal hereunder may be transmitted by the Transfer Agent to the Investor by crediting the account of the Investor's prime broker with the DTC System as directed by such Investor. The Company shall be responsible for the fees of its Transfer Agent and all DTC fees associated with such issuance.

(b) Each Investor, severally and not jointly with the other Investors, agrees with the Company (i) that such Investor will sell any Shares pursuant to either the registration requirements of the 1933 Act, including any applicable prospectus delivery requirements, or an exemption therefrom, (ii) that if Shares are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein and (iii) that if, after the effective date of the registration statement covering the resale of the Shares, such registration statement is not then effective and the Company has provided notice to such Investor to that effect, such Investor will sell Shares only in compliance with an exemption from the registration requirements of the 1933 Act.

7.6 Subsequent Equity Sales.

(a) From the date hereof until ninety (90) days after the Closing Date, without the consent of the Required Investors, the Company shall not (A) issue shares of Common Stock or Common Stock Equivalents or (B) file with the SEC a registration statement under the 1933 Act relating to any shares of Common Stock or Common Stock Equivalents, except pursuant to the terms of agreements to which the Company is currently

a party or as described in the Disclosure Schedule. Notwithstanding the foregoing, the provisions of this Section 7.6(a) shall not apply to (i) the issuance of the Securities hereunder, (ii) the issuance of Common Stock or Common Stock Equivalents upon the conversion or exercise of any securities of the Company outstanding or issuable on the date hereof or outstanding or issuable pursuant to clause (iii) or (v) below, (iii) the issuance of any Common Stock or Common Stock Equivalents pursuant to any Company stock-based compensation plans, (iv) the filing of a registration statement on Form S-8 under the 1933 Act to register the offer and sale of securities under any employee benefit or equity incentive plans of the Company, or (v) the issuance of any Common Stock or Common Stock Equivalents in connection with a transaction described in the Disclosure Schedule.

(b) The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the 1933 Act) that will be integrated with the offer or sale of the Securities in a manner that would require the registration under the 1933 Act of the sale of the Securities to the Investors, or that will be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any trading market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

7.7 Short Sales and Confidentiality After the Date Hereof. Each Investor covenants that neither it nor any Affiliates acting on its behalf or pursuant to any understanding with it will execute any Short Sales during the period from the date hereof until the earlier of such time as (i) the transactions contemplated by this Agreement are first publicly announced or (ii) this Agreement is terminated in full. Each Investor covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company, such Investor will maintain the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Each Investor understands and acknowledges that the SEC currently takes the position that coverage of Short Sales of shares of the Common Stock “against the box” prior to effectiveness of a resale registration statement with securities included in such registration statement would be a violation of Section 5 of the 1933 Act, as set forth in Item 239.10 of the Securities Act Rules Compliance and Disclosure Interpretations compiled by the Office of Chief Counsel, Division of Corporation Finance.

8. Survival and Indemnification

8.1 Survival. The representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing of the transactions contemplated by this Agreement for the applicable statute of limitations.

8.2 Indemnification. The Company agrees to indemnify and hold harmless each Investor and its Affiliates, and their respective directors, officers, trustees, members, managers, employees, investment advisers and agents, from and against any and all losses, claims, damages, liabilities and expenses (including without limitation reasonable and documented attorney fees and disbursements and other documented out-of-pocket expenses reasonably incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) (collectively, “Losses”) to which such Person may become subject as a result of any breach of representation, warranty, covenant or agreement made by or to be performed on the part of the Company under the Transaction Documents, and will reimburse any such Person for all such amounts as they are incurred by such Person solely to the extent such amounts have been finally judicially determined not to have resulted from such Person’s fraud or willful misconduct.

8.3 Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed in writing to pay such fees or expenses, (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects

to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and provided, further, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. No indemnified party will, except with the consent of the indemnifying party, consent to entry of any judgment or enter into any settlement.

9. Miscellaneous.

9.1 Successors and Assigns. This Agreement may not be assigned by a party hereto without the prior written consent of the Company or each of the Investors, as applicable, provided, however, that an Investor may assign its rights and delegate its duties hereunder in whole or in part to an Affiliate or to a third party acquiring some or all of its Securities in a transaction complying with applicable securities laws without the prior written consent of the Company or the other Investors, provided such assignee agrees in writing to be bound by the provisions hereof that apply to Investors. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Without limiting the generality of the foregoing, in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the Common Stock is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Securities" shall be deemed to refer to the securities received by the Investors in connection with such transaction. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective permitted successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.2 Counterparts; Faxes; E-mail. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile or e-mail, which shall be deemed an original.

9.3 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.4 Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by facsimile or e-mail, then such notice shall be deemed given upon receipt of confirmation of complete facsimile transmittal or confirmation of receipt of an e-mail transmission, (iii) if given by mail, then such notice shall be deemed given upon the earlier of (A) receipt of such notice by the recipient or (B) three days after such notice is deposited in first class mail, postage prepaid, and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one Business Day after delivery to such carrier. All notices shall be addressed to the party to be notified at the address as follows, or at such other address as such party may designate by ten days' advance written notice to the other party:

If to the Company:

Invitae Corporation
1400 16th Street
San Francisco, California 94103
Attention: General Counsel
email:

With a copy to:

Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real , Suite 300
San Diego, California 92130
Attention: Mike Hird
Fax:

If to the Investors:

To the addresses set forth on the signature pages hereto.

9.5 Expenses. Except as set forth elsewhere in the Transaction Documents, the parties hereto shall pay their own costs and expenses in connection herewith regardless of whether the transactions contemplated hereby are consummated; it being understood that each of the Company and each Investor has relied on the advice of its own respective counsel.

9.6 Amendments and Waivers. Prior to Closing, no amendment or waiver of any provision of this Agreement will be effective with respect to any party unless made in writing and signed by a duly authorized representative of such party. Following the Closing, any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Investors. Notwithstanding the foregoing, this Agreement may not be amended and the observance of any term of this Agreement may not be waived with respect to any Investor without the written consent of such Investor unless such amendment or waiver applies to all Investors in the same fashion. Any amendment or waiver effected in accordance with this paragraph shall be binding upon (i) prior to Closing, each Investor that signed such amendment or waiver and (ii) following the Closing, each holder of any Securities purchased under this Agreement at the time outstanding, and in each case, each future holder of all such Securities and the Company.

9.7 Publicity. Except as set forth below, no public release or announcement concerning the transactions contemplated hereby shall be issued by the Investors without the prior consent of the Company (which consent shall not be unreasonably withheld), except as such release or announcement may be required by law or the applicable rules or regulations of any securities exchange or securities market, in which case the Investors shall allow the Company reasonable time to comment on such release or announcement in advance of such issuance. Notwithstanding the foregoing, each Investor may identify the Company and the value of such Investor's security holdings in the Company in accordance with applicable investment reporting and disclosure regulations without prior notice to or consent from the Company. The Company shall not include the name of any Investor in any press release or public announcement (which, for the avoidance of doubt, shall not include any SEC Filing) without the prior written consent of such Investor. By 8:30 a.m. (New York City time) on the Business Day immediately following the date this Agreement is executed, the Company shall issue one or more press releases (each, a "Press Release") disclosing all material terms of transactions contemplated by this Agreement and as included on the Disclosure Schedule. No later than 5:30 p.m. (New York City time) on the fourth Business Day following the date this Agreement is executed, the Company will file a Current Report on Form 8-K (the "8-K Filing") attaching the press releases described in the foregoing sentence as well as copies of the Transaction Documents. In addition, the Company will make such other filings and notices in the manner and time required by the SEC or NYSE. The Company shall not, and shall cause each of its officers, directors, employees and agents, not to, provide any Investor with any such material, nonpublic information regarding the Company from and after the filing of the Press Release without the express prior written consent of such Investor.

9.8 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

9.9 Benefit of the Agreement. Each of the Placement Agents is an intended third party beneficiary of the representations and warranties of each Investor set forth in Section 5 of this Agreement.

9.10 Entire Agreement. This Agreement, including the signature pages, Exhibits, and the other Transaction Documents constitute the entire agreement among the parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

9.11 Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

9.12 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

9.13 Independent Nature of Investors' Obligations and Rights. The obligations of each Investor under any Transaction Document are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under any Transaction Document. The decision of each Investor to purchase Securities pursuant to the Transaction Documents has been made by such Investor independently of any other Investor. Nothing contained herein or in any Transaction Document, and no action taken by any Investor pursuant thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Investor acknowledges that no other Investor has acted as agent for such Investor in connection with making its investment hereunder and that no Investor will be acting as agent of such Investor in connection with monitoring its investment in the Securities or enforcing its rights under the Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. The Company acknowledges that each of the Investors has been provided with the same Transaction Documents for the purpose of closing a transaction with multiple Investors and not because it was required or requested to do so by any Investor.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

COMPANY:

INVITAE CORPORATION

By: /s/ Shelly D. Guyer

Name: Shelly D. Guyer

Title: Chief Financial Officer

INVESTOR:

667, L.P.

By: Baker Bros. Advisors LP, Management Company and Investment Advisor to 667, L.P., pursuant to authority granted to it by Baker Biotech Capital, L.P., general partner to 667, L.P., and not as the general partner

/s/ Scott L. Lessing

By: Scott L. Lessing, President

INVESTOR:

Baker Brothers Life Sciences, L.P.

By: Baker Bros. Advisors LP, Management Company and Investment Advisor to BAKER BROTHERS LIFE SCIENCES, L.P., pursuant to authority granted to it by Baker Brothers Life Sciences Capital, L.P., general partner to BAKER BROTHERS LIFE SCIENCES, L.P., and not as the general partner

/s/ Scott L. Lessing

By: Scott L. Lessing, President

INVESTOR:

Redmile Capital Offshore Fund, Ltd.

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the Investment Manager

INVESTOR:

Redmile Capital Fund, LP

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the General Partner and the Investment
Manager

INVESTOR:

Redmile Long Only Master Fund, LP

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the General Partner and the Investment
Manager

INVESTOR:

P Redmile Ltd.

By: /s/ Jeremy Green

Name: Jeremy Green

Title: As Managing Member of Redmile Group, LLC - Investment
Adviser to P Redmile Ltd.

INVESTOR:

Redmile Capital Offshore Fund (ERISA), Ltd.

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the Investment Manager

INVESTOR:

Redmile Special Opportunities Fund, Ltd.

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the Investment Manager

INVESTOR:

Perceptive Life Sciences Master Fund LTD

By: /s/ James H. Mannix

Name: James H. Mannix

Title: C.O.O.

INVESTOR:

Deerfield Partners, L.P.

By: Deerfield Mgmt, L.P.

General Partner

By: J.E. Flynn Capital, LLC

General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

Deerfield International Master Fund, L.P.

By: Deerfield Mgmt, L.P.

General Partner

By: J.E. Flynn Capital, LLC

General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

INVESTOR:

Acuta Capital Fund, LP

By: /s/ Manfred Yu

By: Manfred Yu

Name/Title: Chief Operating Officer of Acuta Capital Partners, LLC, its
general partner

INVESTOR:

Acuta Opportunity Fund, LP

By: /s/ Manfred Yu

By: Manfred Yu

Name/Title: Chief Operating Officer of Acuta Capital Partners, LLC, its
general partner

INVESTOR:

OrbiMed Private Investments V, LP

By: OrbiMed Capital GP V LLC,
its General Partner

By: OrbiMed Advisors LLC,
its Managing Member

/s/ Carl Gordon

By: Carl Gordon

Name/Title: Member

INVESTOR:

Broadfin Healthcare Master Fund, Ltd.

/s/ Kevin Kotler

By:

Name/Title: Kevin Kotler / Director

INVESTOR:

Stonepine Capital, L.P.

By: /s/ Timothy P. Lynch

By: Managing Member, Stonepine Capital Management LLC (General Partner)

Name: Timothy P. Lynch

INVESTOR:

Prelude Opportunity Fund, LP

By: /s/ Cisco J. del Valle

By: Cisco J. del Valle

Name/Title: Managing Member of General Partner

INVESTOR:

Asymmetry Global Healthcare Fund, L.P.

By: /s/ Chris Zellner

By:

Name/Title: Chris Zellner / COO

INVESTOR:

Asymmetry Global Healthcare (Master) Fund, LP

By: /s/ Chris Zellner

By:

Name/Title: Chris Zellner / COO

INVESTOR:

Rock Springs Capital Master Fund LP
by Rock Springs general partner LLC

By: /s/ Graham McPhail

Name: Graham McPhail

Title: Managing Member

Date: 7/31/2017

INVESTOR:

Monashee Capital Master Fund LP

By: /s/ Jeff Muller

By: Jeff Muller, CCO

Name/Title:

INVESTOR:

Victory RS Science Technology Fund, a series of Victory Portfolios

By: /s/ Christopher K. Dyer

By: Christopher K. Dyer

Name/Title: President

EXHIBIT A
Schedule of Investors

| Investor Name | Number of Shares to be Purchased | Number of Preferred Shares to be Purchased | Aggregate Purchase Price |
|--|---|---|--------------------------------|
| Baker Brothers Life Sciences, L.P. | | 3,109,063 | \$26,427,035.50 |
| 667, L.P. | | 349,760 | 2,972,960.00 |
| Redmile Capital Offshore Fund, Ltd. | 556,900 | | 4,733,650.00 |
| Redmile Capital Fund, LP | 320,900 | | 2,727,650.00 |
| Redmile Long Only Master Fund, LP | 283,200 | | 2,407,200.00 |
| P Redmile Ltd. | 64,900 | | 551,650.00 |
| Redmile Capital Offshore Fund (ERISA), Ltd. | 47,600 | | 404,600.00 |
| Redmile Special Opportunities Fund, Ltd. | 26,500 | | 225,250.00 |
| Perceptive Life Sciences Master Fund LTD | 1,180,000 | | 10,030,000.00 |
| Deerfield Partners, L.P. | 531,000 | | 4,513,500.00 |
| Deerfield International Master Fund, L.P. | 369,000 | | 3,136,500.00 |
| Acuta Capital Fund, LP | 355,500 | | 3,021,750.00 |
| Acuta Opportunity Fund, LP | 94,500 | | 803,250.00 |
| OrbiMed Private Investments V, LP | 350,000 | | 2,975,000.00 |
| Broadfin Healthcare Master Fund, Ltd. | 235,500 | | 2,001,750.00 |
| Stonepine Capital, L.P. | 235,500 | | 2,001,750.00 |
| Prelude Opportunity Fund, LP | 111,638 | | 948,923.00 |
| Asymmetry Global Healthcare Fund, L.P. | 100,573 | | 854,870.50 |
| Asymmetry Global Healthcare (Master) Fund, LP | 7,789 | | 66,206.50 |
| Rock Springs Capital Master Fund LP | 105,885 | | 900,022.50 |
| Monashee Capital Master Fund LP | 105,675 | | 898,237.50 |
| Victory RS Science Technology Fund, a series of Victory Portfolios | 105,675 | | 898,237.50 |
| TOTAL | 5,188,235 | 3,458,823 | 73,499,993.00 |

EXHIBIT B
Certificate of Designation

EXHIBIT C
Registration Rights Agreement

EXHIBIT D
INVESTOR QUESTIONNAIRE

To: Invitae Corporation

This Investor Questionnaire ("Questionnaire") must be completed by each potential investor in connection with the offer and sale of the shares of the common stock, \$0.0001 par value per share (the "Securities"), of Invitae Corporation, a Delaware corporation (the "Corporation"). The Securities are being offered and sold by the Corporation without registration under the Securities Act of 1933, as amended (the "Act"), and the securities laws of certain states, in reliance on the exemption contained in Section 4(a)(2) of the Act and in reliance on similar exemptions under applicable state laws. The Corporation must determine that a potential investor meets certain suitability requirements before offering or selling Securities to such investor. The purpose of this Questionnaire is to assure the Corporation that each investor will meet the applicable suitability requirements. The information supplied by you will be used in determining whether you meet such criteria, and reliance upon the private offering exemptions from registration is based in part on the information herein supplied.

This Questionnaire does not constitute an offer to sell or a solicitation of an offer to buy any security. Your answers will be kept strictly confidential. However, by signing this Questionnaire, you will be authorizing the Corporation to provide a completed copy of this Questionnaire to such parties as the Corporation deems appropriate in order to ensure that the offer and sale of the Securities will not result in a violation of the Act or the securities laws of any state and that you otherwise satisfy the suitability standards applicable to purchasers of the Securities. All potential investors must answer all applicable questions and complete, date and sign this Questionnaire. Please print or type your responses and attach additional sheets of paper if necessary to complete your answers to any item.

PART A. BACKGROUND INFORMATION

Name of Beneficial Owner of the Securities: _____

Business Address: _____
(Number and Street)

(City) (State) (Zip Code)

Telephone Number: () _____

If a corporation, partnership, limited liability company, trust or other entity:

Type of entity: _____

State of formation: _____ Approximate Date of formation: _____

Were you formed for the purpose of investing in the Securities being offered?

Yes ____ No ____

If an individual:

Residence Address: _____
(Number and Street)

(City) (State) (Zip Code)

Telephone Number: () _____

Age: _____ Citizenship: _____ Where registered to vote: _____

Set forth in the space provided below the state(s), if any, in the United States in which you maintained your residence during the past two years and the dates during which you resided in each state:

Are you a director or executive officer of the Corporation?

Yes ____ No ____

Social Security or Taxpayer Identification No. _____

PART B. ACCREDITED INVESTOR QUESTIONNAIRE

In order for the Company to offer and sell the Securities in conformance with state and federal securities laws, the following information must be obtained regarding your investor status. Please initial each category applicable to you as a Purchaser of Securities of the Company.

- (1) A bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity;
- (2) A broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934;
- (3) An insurance company as defined in Section 2(a)(13) of the Securities Act;
- (4) An investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act;
- (5) A Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;
- (6) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;
- (7) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- (8) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
- (9) An organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the Securities, with total assets in excess of \$5,000,000;
- (10) A trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Securities, whose purchase is directed by a sophisticated person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of investing in the Company;

- __ (11) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000;
- __ (12) A natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- __ (13) An executive officer or director of the Company;
- __ (14) An entity in which all of the equity owners qualify under any of the above subparagraphs. If the undersigned belongs to this investor category only, list the equity owners of the undersigned, and the investor category which each such equity owner satisfies.

PART C. STOCK REGISTRATION INFORMATION

Please provide the following information:

1. The exact name in which the Securities are to be registered (this is the name that will appear on the Corporation's stock transfer records). You may use a nominee name if appropriate: _____
2. The relationship between the Investor of the Securities and the Registered Holder listed in response to Item 1 above: _____
3. The mailing address, telephone and telecopy number and email address of the Registered Holder listed in response to Item 1 above: _____

4. The Tax Identification Number of the Registered Holder listed in response to Item 1 above: _____

A. FOR EXECUTION BY AN INDIVIDUAL:

_____ By _____
Date Print Name: _____

B. FOR EXECUTION BY AN ENTITY:

_____ Entity Name: _____
Date By _____
Print Name: _____
Title: _____

C. ADDITIONAL SIGNATURES (if required by partnership, corporation or trust document):

_____ Entity Name: _____
Date By _____
Print Name: _____
Title: _____

_____ Entity Name: _____
Date By _____
Print Name: _____
Title: _____

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this “Agreement”) is made and entered into as of July 31, 2017 by and among Invitae Corporation, a Delaware corporation (the “Company”), and the “Investors” named in that certain Securities Purchase Agreement by and among the Company and the Investors, dated as of July 31, 2017 (the “Purchase Agreement”). Capitalized terms used herein have the respective meanings ascribed thereto in the Purchase Agreement unless otherwise defined herein.

The parties hereby agree as follows:

1. Certain Definitions .

As used in this Agreement, the following terms shall have the following meanings:

“Investors” means the Investors identified in the Purchase Agreement and any Affiliate or permitted transferee of any Investor who is a subsequent holder of Registrable Securities.

“Prospectus” means (i) the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus, and (ii) any “free writing prospectus” as defined in Rule 405 under the 1933 Act.

“Register,” “registered” and “registration” refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the 1933 Act, and the declaration or ordering of effectiveness of such Registration Statement or document.

“Registrable Securities” means (i) the Shares and (ii) any other securities issued or issuable with respect to, in exchange for, or upon the exercise or conversion of the Shares, including, but not limited to, the shares of Common Stock issued or issuable upon conversion of the Company’s Series A Convertible Preferred Stock, now owned or hereafter acquired by any of the Investors; whether by merger, charter amendment or otherwise; provided, that a security shall cease to be a Registrable Security upon (A) sale pursuant to a Registration Statement or Rule 144 under the 1933 Act, or (B) such security becoming eligible for sale without restriction by the Investors pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) promulgated under the 1933 Act.

“Registration Statement” means any registration statement of the Company under the 1933 Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all material incorporated by reference in such registration statement other than a registration statement on Form S-4 or S-8 or any successor forms thereto.

“Required Investors” means the Investors holding a majority of the Registrable Securities outstanding from time to time.

“SEC” means the U.S. Securities and Exchange Commission.

“Series A Convertible Preferred Stock” shall mean the Series A Convertible Preferred Stock, par value \$0.0001 per share, issued by the Company pursuant to the terms and conditions of that certain Securities Purchase Agreement dated as of July 31, 2017, by and among the Company and the parties signatory thereto.

2. Registration .

(a) Registration Statements . Promptly following the Closing Date but no later than sixty (60) days after the Closing Date (the “Filing Deadline”), the Company shall prepare and file with the SEC one or more Registration Statements covering the resale of all of the Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415. Any Registration Statement shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance with the 1933 Act and the 1934 Act). Subject to any SEC comments, any Registration Statement shall include the plan of distribution attached hereto as Exhibit A; provided, however, that no Investor shall be named as an “underwriter” in such a Registration Statement without the Investor’s prior written

consent. Such a Registration Statement also shall cover, to the extent allowable under the 1933 Act and the rules promulgated thereunder (including Rule 416), such indeterminate number of additional shares of common stock resulting from stock splits, stock dividends or similar transactions with respect to the Registrable Securities and also may cover any other securities held by any Investor owning more than 10% of the Company's outstanding Common Stock. Each such Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided in accordance with Section 3(c) to the applicable Investors prior to its filing or other submission.

(b) Expenses. The Company will pay all expenses associated with each Registration Statement, including filing and printing fees, the Company's counsel and accounting fees and expenses, costs associated with clearing the Registrable Securities for sale under applicable state securities laws and listing fees, but excluding discounts, commissions, fees of underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities being sold.

(c) Effectiveness.

(i) The Company shall use commercially reasonable efforts to have each Registration Statement declared effective as soon as practicable. By 5:30 p.m. (Eastern time) on the second Business Day following the date on which the Registration Statement is declared effective by the SEC, the Company shall file with the SEC, in accordance with Rule 424 under the 1933 Act, the final prospectus to be used in connection with sales pursuant to such Registration Statement. The Company shall notify the applicable Investors by facsimile or e-mail as promptly as practicable, and in any event, within twenty-four (24) hours, after any Registration Statement is declared effective and shall simultaneously provide the applicable Investors with copies of any related Prospectus to be used in connection with the sale or other disposition of the securities covered thereby.

(ii) For a total of not more than ninety (90) days (which need not be consecutive) in any twelve (12) month period, the Company may suspend the use of any Prospectus included in any Registration Statement contemplated by this Section in the event that the Company determines in good faith that such suspension is necessary to (A) delay the disclosure of material non-public information concerning the Company, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company or (B) amend or supplement the affected Registration Statement or the related Prospectus so that such Registration Statement or Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus in light of the circumstances under which they were made, not misleading (an "Allowed Delay"); provided, that the Company shall promptly (a) notify each Investor in writing of the commencement of an Allowed Delay, but shall not (without the prior written consent of an Investor) disclose to such Investor any material non-public information giving rise to an Allowed Delay, it being understood by each Investor that such notification by the Company may in and of itself constitute material non-public information, (b) advise the Investors in writing to cease sales under such Registration Statement until the end of the Allowed Delay and (c) use commercially reasonable efforts to terminate an Allowed Delay as promptly as practicable.

(d) Effect of Failure to File and Obtain and Maintain Effectiveness of Registration Statement.

(i) If a Registration Statement covering the Registrable Securities is not filed with the SEC on or prior to the Filing Deadline, the Company will make pro rata payments to each Investor then holding Registrable Securities, as liquidated damages and not as a penalty (the "Registration Liquidated Damages"), in an amount equal to 1% of the aggregate amount invested by such Investor for the initial day of failure to file such Registration Statement by the Filing Deadline and for each subsequent 30-day period (pro rata for any portion thereof) thereafter for which no such Registration Statement is filed with respect to the Registrable Securities. Such payments shall constitute the Investors' exclusive monetary remedy for such events, but shall not affect the right of the Investor to seek injunctive relief. Such payments shall be made to each Investor then holding Registrable Securities in cash no later than ten (10) Business Days after the end of the date of the initial failure to file such Registration Statement by the Filing Deadline and each subsequent 30-day period, as applicable. Interest shall accrue at the rate of one percent (1%) per month on any such liquidated damages payments that shall not be paid by the applicable payment date until such amount is paid in full.

(ii) If (A) a Registration Statement covering the Registrable Securities is not declared effective by the SEC prior to the earlier of (i) five (5) Business Days after the SEC informs the Company that no review of such Registration Statement will be made or that the SEC has no further comments on such Registration Statement or (ii) the 120th day after the Closing Date (or the 150th day if the SEC reviews such Registration Statement), or (B) after a Registration Statement has been declared effective by the SEC, sales cannot be made pursuant to such Registration Statement for any reason (including, without limitation, by reason of a stop order or the Company's failure to update such Registration Statement), but excluding any Allowed Delay or the inability of any Investor to sell the Registrable Securities covered thereby due to market conditions or (C) after the date six months following the Closing Date, and only in the event a Registration Statement is not effective or available to sell all Registrable Securities, the Company fails to file with the SEC any required reports under Section 13 or 15(d) of the 1934 Act such that it is not in compliance with Rule 144(c)(1), as a result of which the Investors who are not Affiliates of the Company are unable to sell Registrable Securities without restriction under Rule 144 (or any successor thereto) promulgated under the 1933 Act (each of (A), (B) and (C), a "Maintenance Failure"), then the Company will make pro rata payments to each Investor then holding Registrable Securities, as liquidated damages and not as a penalty (the "Effectiveness Liquidated Damages" and together with the Registration Liquidated Damages, the "Liquidated Damages"), in an amount equal to 1% of the aggregate amount invested by such Investor for the Registrable Securities then held by such Investor for the initial day of a Maintenance Failure and for each 30-day period (pro rata for any portion thereof) thereafter until the Maintenance Failure is cured (each, a "Blackout Period"). The Effectiveness Liquidated Damages shall be paid monthly within ten (10) Business Days of the end of the date of such Maintenance Failure and each subsequent 30-day period, as applicable. Such payments shall be made to each Investor then holding Registrable Securities in cash. Interest shall accrue at the rate of one percent (1%) per month on any such liquidated damages payments that shall not be paid by the applicable payment date until such amount is paid in full.

(iii) The parties agree that (1) notwithstanding anything to the contrary herein or in the Purchase Agreement, no Liquidated Damages shall be payable with respect to any period after the expiration of the Effectiveness Period (as defined below) (it being understood that this sentence shall not relieve the Company of any Liquidated Damages accruing prior to the expiration of the Effectiveness Period), and in no event shall the aggregate amount of Liquidated Damages payable to an Investor exceed, in the aggregate, three percent (3%) of the aggregate purchase price paid by such Investor pursuant to the Purchase Agreement and (2) except with respect to (A) the initial day of failure to file a Registration Statement by the Filing Deadline and (B) the initial day of any Maintenance Failure, in no event shall the Company be liable in any thirty (30) day period for Liquidated Damages under this Agreement in excess of one percent (1%) of the aggregate purchase price paid by the Investors pursuant to the Purchase Agreement.

(e) Rule 415: Cutback. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the 1933 Act or requires any Investor to be named as an "underwriter," the Company shall use commercially reasonable efforts to advocate before the SEC its reasonable position that the offering contemplated by such Registration Statement is a valid secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that none of the Investors is an "underwriter." The Investors shall have the right to select one legal counsel to review and oversee any registration or matters pursuant to this Section 2(e), including participation in any meetings or discussions with the SEC regarding the SEC's position and to comment on any written submission made to the SEC with respect thereto, which counsel shall be designated by the holders of a majority of the Registrable Securities. In the event that, despite the Company's commercially reasonable efforts and compliance with the terms of this Section 2(e), the SEC does not alter its position, the Company shall (i) remove from such Registration Statement such portion of the Registrable Securities (the "Cut Back Shares") and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company's compliance with the requirements of Rule 415 (collectively, the "SEC Restrictions"); provided, however, that the Company shall not agree to name any Investor as an "underwriter" in such Registration Statement without the prior written consent of such Investor. Any cut-back imposed on the Investors pursuant to this Section 2(e) shall be allocated among the Investors on a pro rata basis and shall be applied first to any of the Registrable Securities of such Investor as such Investor shall designate, unless the SEC Restrictions otherwise require or provide or the Investors otherwise agree. No liquidated damages shall accrue as to any Cut Back Shares until such date as the Company is able to effect the registration of such Cut Back Shares in accordance with any SEC Restrictions applicable to such Cut Back Shares (such date, the "Restriction

Termination Date”). From and after the Restriction Termination Date applicable to any Cut Back Shares, all of the provisions of this Section 2 (including the Company’s obligations with respect to the filing of a Registration Statement and its obligations to use commercially reasonable efforts to have such Registration Statement declared effective within the time periods set forth herein and the liquidated damages provisions relating thereto) shall again be applicable to such Cut Back Shares; provided, however, that (i) the Filing Deadline for such Registration Statement including such Cut Back Shares shall be no earlier than twenty (20) Business Days after such Restriction Termination Date, and (ii) the date by which the Company is required to obtain effectiveness with respect to such Cut Back Shares under Section 2(c) shall be no earlier than the 100th day immediately after the Restriction Termination Date (or no earlier than the 130th day if the SEC reviews such Registration Statement).

3. Company Obligations. The Company will use commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the terms hereof, and pursuant thereto the Company will, as expeditiously as possible:

(a) use commercially reasonable efforts to cause such Registration Statement to become effective and to remain continuously effective for a period that will terminate upon the earlier of (i) the date on which all Registrable Securities held by non-affiliates of the Company covered by such Registration Statement as amended from time to time, have been sold, and (ii) the date on which all Registrable Securities covered by such Registration Statement may be sold by non-affiliates without restriction pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) promulgated under the 1933 Act (the “Effectiveness Period”) and advise the Investors promptly in writing when the Effectiveness Period has expired;

(b) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and the related Prospectus as may be necessary to keep such Registration Statement effective for the Effectiveness Period and to comply with the provisions of the 1933 Act and the 1934 Act with respect to the distribution of all of the Registrable Securities covered thereby;

(c) provide copies to and permit each Investor to review each applicable Registration Statement and all amendments and supplements thereto no fewer than three (3) days prior to their filing with the SEC and to furnish reasonable comments thereon;

(d) furnish to each Investor whose Registrable Securities are included in any Registration Statement (i) promptly after the same is prepared and filed with the SEC, if requested by the Investor, one (1) copy of any Registration Statement and any amendment thereto, each preliminary prospectus and Prospectus and each amendment or supplement thereto, and (ii) such number of copies of a Prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents as each Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor that are covered by such Registration Statement;

(e) use commercially reasonable efforts to (i) prevent the issuance of any stop order or other suspension of effectiveness and, (ii) if such order is issued, obtain the withdrawal of any such order at the earliest practical moment;

(f) prior to any public offering of Registrable Securities, use commercially reasonable efforts to register or qualify or cooperate with the Investors and their counsel in connection with the registration or qualification of such Registrable Securities for the offer and sale under the securities or blue sky laws of such jurisdictions requested by the Investors and do any and all other commercially reasonable acts or things necessary or advisable to enable the distribution in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(f), (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this Section 3(f), or (iii) file a general consent to service of process in any such jurisdiction;

(g) use commercially reasonable efforts to cause all Registrable Securities covered by a Registration Statement to be listed on each securities exchange, interdealer quotation system or other market on which similar securities issued by the Company are then listed;

(h) promptly notify the Investors, at any time prior to the end of the Effectiveness Period, upon discovery that, or upon the happening of any event as a result of which, the Prospectus includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing (provided that such notice shall not, without the prior written consent of an Investor, disclose to such Investor any material non-public information regarding the Company, it being understood by each Investor that such notice may in and of itself constitute material non-public information), and promptly prepare, file with the SEC and furnish to such holder a supplement to or an amendment of such Prospectus as may be necessary so that such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(i) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, including, without limitation, Rule 172 under the 1933 Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the 1933 Act, promptly inform the Investors in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Investors are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder; and make available to its security holders, as soon as reasonably practicable, but not later than the Availability Date (as defined below), an earnings statement covering a period of at least twelve (12) months, beginning after the effective date of each Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the 1933 Act, including Rule 158 promulgated thereunder (for the purpose of this subsection 3(i), "Availability Date" means the 45th day following the end of the fourth fiscal quarter that includes the effective date of such Registration Statement, except that, if such fourth fiscal quarter is the last quarter of the Company's fiscal year, "Availability Date" means the 90th day after the end of such fourth fiscal quarter);

(j) if requested by an Investor, the Company shall (i) as soon as practicable, incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) as soon as practicable, make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) as soon as practicable, supplement or make amendments to any Registration Statement if reasonably requested by an Investor holding any Registrable Securities;

(k) within two (2) Business Days after a Registration Statement which covers Registrable Securities is declared effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC; and

(l) with a view to making available to the Investors the benefits of Rule 144 (or its successor rule) and any other rule or regulation of the SEC that may at any time permit the Investors to sell shares of common stock to the public without registration, the Company covenants and agrees to: (i) make and keep current public information available, as those terms are understood and defined in Rule 144, until the earlier of (A) six months after such date as all of the Registrable Securities may be sold without restriction by the holders thereof who are not affiliates pursuant to Rule 144 or any other rule of similar effect or (B) such date as all of the Registrable Securities held by non-affiliates shall have been resold; (ii) file with the SEC in a timely manner all reports and other documents required of the Company under the 1934 Act; and (iii) furnish to each Investor upon request, as long as such Investor owns any Registrable Securities, (A) a written statement by the Company that it has complied with the reporting requirements of the 1934 Act, (B) a copy of the Company's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, and (C) such other information as may be reasonably requested in order to avail such Investor of any rule or regulation of the SEC that permits the sale of any such Registrable Securities without registration.

4. Obligations of the Investors.

(a) Each Investor shall furnish in writing to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect the registration of such Registrable Securities, and shall execute such documents in connection with such registration as the Company may reasonably request. At least five (5) Business Days prior to the first anticipated filing date of any Registration Statement, the Company shall notify each Investor of the information the Company requires from such Investor if such Investor elects to have any of the Registrable Securities included in such Registration Statement. An Investor shall provide such information to the Company at least two (2) Business Days prior to the first anticipated filing date of such Registration Statement if such Investor elects to have any of the Registrable Securities included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of any particular Investor or to make any Liquidated Damages payments set forth in this Agreement to such Investor that such Investor furnish to the Company the information regarding itself, the Registrable Securities and other shares of common stock of the Company held by it and the intended method of disposition of the Registrable Securities held by it (if different from the Plan of Distribution set forth on Exhibit A hereto) as shall be reasonably required to effect and maintain the registration of such Registrable Securities.

(b) Each Investor, by its acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement hereunder, unless such Investor has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of either (i) the commencement of an Allowed Delay pursuant to Section 2(c)(ii) or (ii) the happening of an event pursuant to Section 3(h) hereof, such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement covering such Registrable Securities, until the Investor is advised by the Company that such dispositions may again be made.

(d) Each Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to any Registration Statement.

5. Indemnification.

(a) Indemnification by the Company. The Company will indemnify and hold harmless each Investor and its officers, directors, partners, members, employees and agents, and each other person, if any, who controls such Investor within the meaning of the 1933 Act, against any losses, claims, damages or liabilities, joint or several, to which they may become subject under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement or omission or alleged omission of any material fact contained in any Registration Statement, any preliminary Prospectus or final Prospectus, or any amendment or supplement thereof; (ii) any blue sky application or other document executed by the Company specifically for that purpose or based upon written information furnished by the Company filed in any state or other jurisdiction in order to qualify any or all of the Registrable Securities under the securities laws thereof (any such application, document or information herein called a "Blue Sky Application"); (iii) the omission or alleged omission to state in a Blue Sky Application a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iv) any violation by the Company or its agents of any rule or regulation promulgated under the 1933 Act applicable to the Company or its agents and relating to action or inaction required of the Company in connection with such registration, and will reimburse such Investor, and each such officer, director, partner, member, employee, agent and each such controlling person for any legal or other documented, out-of-pocket expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case if and to the extent that any such loss, claim, damage or liability arises out of or is based upon (i) an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Investor or any such controlling person in writing specifically for use in such Registration Statement, Prospectus or Blue Sky Application, (ii) the use by an Investor of an outdated or defective

Prospectus after the Company has notified such Investor in writing that such Prospectus is outdated or defective or (iii) an Investor's failure to send or give a copy of the Prospectus or supplement (as then amended or supplemented), if required (and not exempted) to the Persons asserting an untrue statement or omission or alleged untrue statement or omission at or prior to the written confirmation of the sale of Registrable Securities.

(b) Indemnification by the Investors. Each Investor agrees, severally but not jointly, to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors, officers, employees, stockholders, agents and each person who controls the Company (within the meaning of the 1933 Act) against any losses, claims, damages, liabilities or expenses (including reasonable attorney fees) resulting from any untrue or alleged untrue statement of a material fact or any omission or alleged omission of a material fact required to be stated in any Registration Statement or Prospectus or preliminary Prospectus or amendment or supplement thereto or necessary to make the statements therein not misleading, to the extent, but only to the extent that such untrue statement or omission, or alleged untrue statement or omission, is contained in any information furnished in writing by such Investor to the Company specifically for inclusion in such Registration Statement or Prospectus or amendment or supplement thereto. Except to the extent that any such losses, claims, damages, liabilities or expenses are finally judicially determined to have resulted from an Investor's fraud or willful misconduct, in no event shall the liability of an Investor be greater in amount than the dollar amount of the proceeds (net of all expense paid by such Investor in connection with any claim relating to this Section 5 and the amount of any damages such Investor has otherwise been required to pay by reason of such untrue statement or omission) received by such Investor upon the sale of the Registrable Securities included in such Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed in writing to pay such fees or expenses, (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and provided, further, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation.

(d) Contribution. If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an indemnified party or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnified party and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. Except to the extent that any such losses, claims, damages or liabilities are finally judicially determined to have resulted from a holder of Registrable Securities' fraud or willful misconduct, in no event shall the contribution obligation of such holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such holder in connection with any claim relating to this Section 5 and the amount of any damages such holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

6. Miscellaneous.

(a) Amendments and Waivers. This Agreement may be amended only by a writing signed by the Company and the Required Investors. The Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained the written consent to such amendment, action or omission to act of the Required Investors.

(b) Notices. All notices and other communications provided for or permitted hereunder shall be made as set forth in Section 9.4 of the Purchase Agreement.

(c) Assignments and Transfers by Investors. The provisions of this Agreement shall be binding upon and inure to the benefit of the Investors and their respective successors and assigns. An Investor may transfer or assign, in whole or from time to time in part, to one or more persons its rights hereunder in connection with the transfer of Registrable Securities by such Investor to such person, provided that such Investor complies with all laws applicable thereto, and the provisions of the Purchase Agreement, and provides written notice of assignment to the Company promptly after such assignment is effected, and such person agrees in writing to be bound by all of the provisions contained herein.

(d) Assignments and Transfers by the Company. This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Required Investors, provided, however, that in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the common stock is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Registrable Securities" shall be deemed to include the securities received by the Investors in connection with such transaction unless such securities are otherwise freely tradable by the Investors after giving effect to such transaction.

(e) Benefits of the Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(f) Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile or e-mail, which shall be deemed an original.

(g) Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provisions hereof prohibited or unenforceable in any respect.

(i) Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(j) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(k) Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

COMPANY:

INVITAE CORPORATION

By: /s/ Shelly D. Guyer

Name: Shelly D. Guyer

Title: Chief Financial Officer

INVESTOR:

Redmile Capital Offshore Fund, Ltd.

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the Investment Manager

INVESTOR:

Redmile Capital Fund, LP

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the General Partner and the Investment
Manager

INVESTOR:

Redmile Long Only Master Fund, LP

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the General Partner and the Investment
Manager

INVESTOR:

P Redmile Ltd.

By: /s/ Jeremy Green

Name: Jeremy Green

Title: As Managing Member of Redmile Group, LLC - Investment Adviser
to P Redmile Ltd.

INVESTOR:

Redmile Capital Offshore Fund (ERISA), Ltd.

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the Investment Manager

INVESTOR:

Redmile Special Opportunities Fund, Ltd.

By: /s/ Jeremy Green

Name: Jeremy Green

Title: Managing Member of the Investment Manager

INVESTOR:

Perceptive Life Sciences Master Fund LTD

By: /s/ James H. Mannix

Name: James H. Mannix

Title: C.O.O.

INVESTOR:

Deerfield Partners, L.P.

By: Deerfield Mgmt, L.P.

General Partner

By: J.E. Flynn Capital, LLC

General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

Deerfield International Master Fund, L.P.

By: Deerfield Mgmt, L.P.

General Partner

By: J.E. Flynn Capital, LLC

General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

INVESTOR:

Acuta Capital Fund, LP

By: /s/ Manfred Yu

Name: Manfred Yu

Title: Chief Operating Officer of Acuta Capital Partners, LLC, its general partner

INVESTOR:

Acuta Opportunity Fund, LP

By: /s/ Manfred Yu

Name: Manfred Yu

Title: Chief Operating Officer of Acuta Capital Partners, LLC, its general partner

INVESTOR:

OrbiMed Private Investments V, LP

By: OrbiMed Capital GP V LLC,
its General Partner

By: OrbiMed Advisors LLC,
its Managing Member

By: /s/ Carl Gordon
Name: Carl Gordon
Title: Member

INVESTOR:

Broadfin Healthcare Master Fund, Ltd.

/s/ Kevin Kotler

Name: Kevin Kotler

Title: Director

INVESTOR:

Stonepine Capital, L.P.

By: /s/ Timothy P. Lynch

Name: Timothy P. Lynch

By: Managing Member, Stonepine Capital Management (General Partner)

INVESTOR:

Prelude Opportunity Fund, LP

By: /s/ Cisco J. del Valle

Name: Cisco J. del Valle

Title: Managing Member of General Partner

INVESTOR:

Asymmetry Global Healthcare Fund, L.P.

By: /s/ Chris Zellner

Name: Chris Zellner

Title: C.O.O.

INVESTOR:

Asymmetry Global Healthcare (Master) Fund, LP

By: /s/ Chris Zellner

Name: Chris Zellner

Title: C.O.O.

INVESTOR:

Rock Springs Capital Master Fund LP
by Rock Springs general partner LLC

By: /s/ Graham McPhail

Name: Graham McPhail

Title: Managing Member

Date: 7/31/2017

INVESTOR:

Monashee Capital Master Fund LP

By: /s/ Jeff Muller

Name: Jeff Muller

Title: CCO

INVESTOR:

Victory RS Science Technology Fund, a series of Victory Portfolios

By: /s/ Christopher K. Dyer

Name: Christopher K. Dyer

Title: President

Plan of Distribution

We are registering the shares of common stock issued to the selling stockholders to permit the resale of these shares of common stock by the holders of the shares of common stock from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of common stock. We will bear all fees and expenses incident to our obligation to register the shares of common stock. There can be no assurance that any selling stockholder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell any or all of their shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions directly or through one or more underwriters, broker dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. Dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices. These sales may be effected in transactions which may involve crosses or block transactions.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales effected after the date the registration statement of which this prospectus is a part is declared effective by the SEC;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted by applicable law.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, as amended (the "Securities Act"), amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and if such short sale shall take place after the date that the registration statement of which this prospectus forms a part is declared effective by the SEC, the selling stockholders may deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such

broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction). Notwithstanding the foregoing, the selling stockholders have been advised that they may not use shares registered on the registration statement to cover short sales of our common stock made prior to the date the registration statement, of which this prospectus forms a part, has been declared effective by the SEC.

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be “underwriters” within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are “underwriters” within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act, including Rule 172 thereunder and may be subject to certain statutory liabilities of, including but not limited to, Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Securities Exchange Act of 1934, as amended, or the Exchange Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, and any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

Each selling stockholder and any other person participating in such distribution will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including, without limitation, to the extent applicable, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling stockholder and any other participating person. To the extent applicable, Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of Common Stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of Common Stock.

To the extent applicable, we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

Broker dealers engaged by the selling stockholders may arrange for other broker dealers to participate in sales. If the selling stockholders effect such transactions by selling shares of common stock to or through underwriters, broker dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholders or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal. Such commissions will be in amounts to be negotiated, but, except as set forth in a supplement to this prospectus, in the case of an agency transaction will not be in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of

- (1) such time as all of the shares covered by this prospectus held by non-affiliates have been sold pursuant to and in accordance with such registration statement or
- (2) the date on which all of the shares may be sold by non-affiliates without restriction pursuant to Rule 144 of the Securities Act.

AMENDMENT TO REGISTRATION RIGHTS AGREEMENT

This Amendment to Registration Rights Agreement (this “Amendment”) is made as of July 31, 2017 (the “Effective Date”), by and among Invitae Corporation, a Delaware corporation (the “Company”), and the persons listed on the attached Schedule A, each of whom is an “Investor” under that certain Fifth Amended and Restated Investors’ Rights Agreement made as of August 26, 2014 among the Company and the various Investors party thereto (as amended to date, the “Agreement”). This Amendment shall be effective upon execution by the Company and the holders of a majority of the Registrable Securities then outstanding (as defined in the Agreement) as of the Effective Date. Unless otherwise defined herein, capitalized terms used in this Amendment have the respective meanings ascribed to them in Section 1 of the Agreement.

WHEREAS, the parties hereto desire to modify the Agreement to provide that shares of Common Stock which may be sold by the holder thereof without limitation under SEC Rule 144 shall be excluded from the definition of Registrable Securities.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1 Amendments

1.1 Definition. The definition of Registrable Securities in the Agreement is hereby amended and restated to read in full as follows:

“**Registrable Securities**” means the following: (i) the Common Stock issuable or issued upon conversion of the Preferred Stock; and (ii) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clause (i) above; excluding in all cases, however, (x) any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Section 6.1 and (y) any shares for which registration rights have terminated pursuant to Section 2.13 of this Agreement.

1.2 Section 2.13. Section 2.13 of the Agreement is hereby amended and restated to read in full as follows:

“2.13 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Section 2.1 or Section 2.2 of this Agreement shall terminate upon the earliest to occur of:

- (a) the closing of a Deemed Liquidation Event, as such term is defined in the Company’s Certificate of Incorporation in effect immediately prior to the IPO, and distribution of proceeds to or escrow for the benefit of the Holders in accordance with the Company’s Certificate of Incorporation in effect immediately prior to such transaction;
- (b) the seventh anniversary of the IPO; and

(c) such time as SEC Rule 144 or another similar exemption under the Securities Act is available for the sale of all of such Holder's shares without limitation during a three-month period without registration."

Section 2 Miscellaneous

This Amendment may be (i) executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one document, and (ii) executed and delivered by facsimile or electronic transmission in .PDF format (and upon such delivery the facsimile or .PDF format signature shall be deemed to have the same effect as if the original signature had been delivered to the other parties).

IN WITNESS WHEREOF, the parties hereto have executed this Amendment effective as of the day, month and year first above written.

COMPANY:

INVITAE CORPORATION

By: /s/ Sean George

Name: Sean George

Title: Chief Executive Officer and President

**SIGNATURE PAGE TO
INVITAE CORPORATION
AMENDMENT TO FIFTH AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

The undersigned hereby execute and deliver the Amendment to the Fifth Amended and Restated Investors' Rights Agreement (the "Amendment") to which this additional signature page is attached which, together with all counterparts thereto and signature pages of the other parties with respect thereto, shall constitute one and the same document in accordance with the terms of the Amendment.

/s/ Randal W. Scott

Randal W. Scott

**SIGNATURE PAGE TO
INVITAE CORPORATION
AMENDMENT TO FIFTH AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

The undersigned hereby execute and deliver the Amendment to the Fifth Amended and Restated Investors' Rights Agreement (the "Amendment") to which this additional signature page is attached which, together with all counterparts thereto and signature pages of the other parties with respect thereto, shall constitute one and the same document in accordance with the terms of the Amendment.

BAKER BROTHERS LIFE SCIENCES, L.P.

By: BAKER BROS. ADVISORS LP, management company and investment adviser to **Baker Brothers Life Sciences, L.P.**, pursuant to authority granted to it by Baker Brothers Life Sciences Capital, L.P., general partner to Baker Brothers Life Sciences, L.P., and not as the general partner

By: /s/ Scott Lessing
Scott Lessing, President

**SIGNATURE PAGE TO
INVITAE CORPORATION
AMENDMENT TO FIFTH AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

The undersigned hereby execute and deliver the Amendment to the Fifth Amended and Restated Investors' Rights Agreement (the "Amendment") to which this additional signature page is attached which, together with all counterparts thereto and signature pages of the other parties with respect thereto, shall constitute one and the same document in accordance with the terms of the Amendment.

667, L.P. (account #1)

By: BAKER BROS. ADVISORS LP, management company and investment adviser to **667, L.P.**, pursuant to authority granted to it by Baker Biotech Capital, L.P., general partner to 667, L.P., and not as the general partner

By: /s/ Scott Lessing
Scott Lessing, President

**SIGNATURE PAGE TO
INVITAE CORPORATION
AMENDMENT TO FIFTH AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

The undersigned hereby execute and deliver the Amendment to the Fifth Amended and Restated Investors' Rights Agreement (the "Amendment") to which this additional signature page is attached which, together with all counterparts thereto and signature pages of the other parties with respect thereto, shall constitute one and the same document in accordance with the terms of the Amendment.

667, L.P. (account #2)

By: BAKER BROS. ADVISORS LP, management company and investment adviser to **667, L.P.**, pursuant to authority granted to it by Baker Biotech Capital, L.P., general partner to 667, L.P., and not as the general partner

By: /s/ Scott Lessing
Scott Lessing, President

**SIGNATURE PAGE TO
INVITAE CORPORATION
AMENDMENT TO FIFTH AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

The undersigned hereby execute and deliver the Amendment to the Fifth Amended and Restated Investors' Rights Agreement (the "Amendment") to which this additional signature page is attached which, together with all counterparts thereto and signature pages of the other parties with respect thereto, shall constitute one and the same document in accordance with the terms of the Amendment.

14159, L.P.

By: BAKER BROS. ADVISORS LP, management company and investment adviser to **14159, L.P.**, pursuant to authority granted to it by 14159 Capital, L.P., general partner to 14159, L.P., and not as the general partner

By: /s/ Scott Lessing
Scott Lessing, President

**SIGNATURE PAGE TO
INVITAE CORPORATION
AMENDMENT TO FIFTH AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

The undersigned hereby execute and deliver the Amendment to the Fifth Amended and Restated Investors' Rights Agreement (the "Amendment") to which this additional signature page is attached which, together with all counterparts thereto and signature pages of the other parties with respect thereto, shall constitute one and the same document in accordance with the terms of the Amendment.

THOMAS, MCNERNEY & PARTNERS II, L.P.

By: Thomas, McNerney & Partners II, LLC
Its: General Partner

By: /s/ James E. Thomas

Name: James E. Thomas
Title: Manager

TMP NOMINEE II, LLC

By: /s/ James E. Thomas

Name: James E. Thomas
Title: Manager

TMP ASSOCIATES II, L.P.

By: Thomas, McNerney & Partners II, LLC
Its: General Partner

By: /s/ James E. Thomas

Name: James E. Thomas
Title: Manager

Schedule A

The Investors

Randal W. Scott
Baker Brothers Life Sciences, L.P.
667, L.P. (account #1)
667, L.P. (account #2)
14159, L.P.
Thomas, McNerney & Partners II, L.P.
TMP Nominee II, LLC
TMP Associates II, L.P.

AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

This Amended and Restated Registration Rights Agreement (this “Agreement”) is made as of July 31, 2017, by and among Invitae Corporation, a Delaware corporation (the “Company”), and the persons listed on the attached Schedule A, each of whom is an “Investor” (each a “Pre-IPO Investor” and collectively the “Pre-IPO Investors”) under that certain Fifth Amended and Restated Investors’ Rights Agreement made as of August 26, 2014 among the Company and the various Pre-IPO Investors party thereto (as amended to date, the “Prior Agreement”), with each such Pre-IPO Investor listed on the attached Schedule A referred to herein as an “Investor” and collectively as the “Investors.” This Agreement shall be effective, and shall supersede and replace the Prior Agreement, upon execution by the Company and the holders of a majority of the Registrable Securities then outstanding (as defined in the Prior Agreement). Notwithstanding any provision herein to the contrary, the Company may unilaterally amend the attached Schedule A at any time in its discretion to add any Pre-IPO Investor that is a party to the Prior Agreement as of the date hereof which tenders a signature page hereto. Unless otherwise defined herein, capitalized terms used in this Agreement have the respective meanings ascribed to them in Section 1.

RECITALS

WHEREAS, the Company and the Investors wish to provide for certain arrangements with respect to the registration of the Registrable Securities (as defined below) by the Company under the Securities Act (as defined below), with the arrangements set forth herein to supersede and replace the Prior Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

Section 1 Definitions

1.1 Certain Definitions. In addition to the terms defined elsewhere in this Agreement, as used in this Agreement, the following terms have the respective meanings set forth below:

(a) “Affiliate” means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer or director of such Person or any investment fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person.

(b) “Board” shall mean the Board of Directors of the Company.

(c) “Commission” shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(d) “Common Stock” shall mean the common stock of the Company, par value \$0.0001 per share.

(e) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(f) “Other Selling Stockholders” shall mean persons other than the Investors who are from time to time entitled to include their Common Stock in certain registrations hereunder.

(g) “Other Securities” shall mean securities of the Company, other than Registrable Securities (as defined below), with respect to which registration rights have been granted by the Company from time to time.

(h) “Person” shall mean any individual, partnership, corporation, company, association, trust, joint venture, limited liability company, unincorporated organization, entity or division, or any government, governmental department or agency or political subdivision thereof.

(i) “Registrable Securities” shall mean, subject to the terms of this Agreement (including, without limitation, Section 2.9), the shares of Common Stock and any Common Stock issued or issuable upon the exercise or conversion of any other securities (whether equity, debt or otherwise) of the Company if (i) owned by any Investor as of the date of this Agreement and constituting Registrable Securities as defined in the Prior Agreement or (ii) acquired by any Significant Investor, whether before or after the date of this Agreement, if the Company has been notified in writing by such Significant Investor of such acquisition (which, for this purpose, shall include the filing of a Schedule 13D or a Schedule 13G under the Exchange Act by such Significant Investor reflecting such acquisition). For the avoidance of doubt, any Registrable Securities held by a Significant Investor pursuant to clause (ii) of the preceding sentence shall not cease to be Registrable Securities solely because the Significant Investor ceases to be a Significant Investor.

(j) The terms “register,” “registered” and “registration” shall refer to a registration effected by preparing and filing a Registration Statement in compliance with the Securities Act, and such Registration Statement becoming effective under the Securities Act.

(k) “Registration Expenses” shall mean all expenses incurred by the Company in effecting any registration pursuant to this Agreement, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company and up to \$50,000 of reasonable legal expenses of one special counsel for Investors (if different from the Company’s counsel and if such counsel is reasonably approved by the Company) per underwritten public offering, blue sky fees and expenses, and expenses of any regular or special audits incident to or required by any such registration, but shall not include Selling Expenses.

(l) “Registration Statement” means any registration statement of the Company filed with, or to be filed with, the Commission under the Securities Act, including the related prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement as may be necessary to comply with applicable securities laws other than a registration statement (and related prospectus) filed on Form S-4 or Form S-8 or any successor forms thereto.

(n) “Required Investor Approval” shall mean approval by (i) the Investors holding a majority of the shares of Registrable Securities then outstanding as well as (ii) each Significant Investor.

(m) “Rule 144” shall mean Rule 144 as promulgated by the Commission under the Securities Act, as such rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(o) “Securities Act” shall mean the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(p) “Selling Expenses” shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities, the fees and expenses of any legal counsel and any other advisors any of the Investors engage and all similar fees and commissions relating to the Investors’ disposition of the Registrable Securities.

(q) “Significant Investor” shall mean an Investor which, together with its Affiliates, has continuously held since the date of this Agreement Registrable Securities representing at least ten percent of the outstanding shares of Common Stock.

Section 2 Resale Registration Rights

2.1 Resale Registration Rights

(a) Following written demand for a registration under this Section 2.1 by Investors holding Registrable Securities representing at least ten percent of the outstanding shares of Common Stock, the Company shall (i) within ten days thereafter provide notice to all other Investors of such written demand and (ii) file with the Commission a Registration Statement on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance with the Securities Act) covering the resale of the Registrable Securities by the Investors submitting such demand as well as the resale of any other Registrable Securities requested to be included by other Investors (the “Resale Registration Shelf”), and the Company shall file such Resale Registration Shelf as promptly as reasonably practicable following such demand, and in any event within 60 days of such demand. Such Resale Registration Shelf shall include a “final” prospectus, including the information required by Item 507 of Regulation S-K of the Securities Act, as provided by the Investors in accordance with Section 2.7. Notwithstanding the foregoing, before filing the Resale Registration Shelf, the Company shall furnish to the Investors submitting the demand or requesting inclusion of Registrable Securities a copy of the Resale Registration Shelf and afford such Investors an opportunity to review and comment on the Resale Registration Shelf. The Company’s obligation pursuant to this Section 2.1(a) is conditioned upon the Investors providing the information contemplated in Section 2.7.

(b) The Company shall use its reasonable best efforts to cause the Resale Registration Shelf and related prospectuses to become effective as promptly as practicable after filing. The Company shall use its reasonable best efforts to cause such Registration Statement to remain effective under the Securities Act until the earlier of the date (i) all Registrable Securities covered by the Resale Registration Shelf have been sold or may be sold freely without limitations or restrictions as to volume or manner of sale pursuant to Rule 144 or (ii) all Registrable Securities covered by the Resale Registration Shelf otherwise cease to be Registrable Securities pursuant to Section 2.9 hereof. The Company shall promptly, and within two business days after the Company confirms effectiveness of the Resale Registration Shelf with the Commission, notify the Investors of the effectiveness of the Resale Registration Shelf.

(c) Notwithstanding anything contained herein to the contrary, the Company shall not be obligated to effect, or to take any action to effect, a registration pursuant to Section 2.1(a):

(i) if the Company has and maintains an effective Registration Statement on Form S-3ASR that provides for the resale of an unlimited number of securities by selling stockholders (a “Company Registration Shelf”);

(ii) during the period 45 days prior to the Company’s good faith estimate of the date of filing of a Company Registration Shelf; or

(iii) if, during the prior 12 month period, the Company has caused a Registration Statement to become effective pursuant to this Section 2.1 or a Registration Statement otherwise covering the Registrable Securities of the Investors delivering the written demand to become effective.

(d) If the Company has a Company Registration Shelf in place at any time in which the Investors make a demand pursuant to Section 2.1(a), the Company shall, in lieu of the obligations of Section 2.1(a), (i) within ten days thereafter provide notice to all other Investors of such written demand and (ii) thereafter file with the Commission, as promptly as reasonably practicable, and in any event within 30 business days after such demand, a “final” prospectus supplement to its Company Registration Shelf covering the resale of the Registrable Securities by the Investors submitting such demand as well as the resale of any other Registrable Securities requested to be included by other Investors (the “Prospectus”); provided, however, that the Company shall not be obligated to file more than one Prospectus pursuant to this Section 2.1(d) in any six month period to add additional Registrable Securities to the Company Registration Shelf that were acquired by the Investors other than directly from the Company or in an underwritten public offering by the Company. The Prospectus shall include the information required under Item 507 of Regulation S-K of the Securities Act, which information shall be provided by the Investors in accordance with Section 2.7. Notwithstanding the foregoing, before filing the Prospectus, the Company shall furnish to the Investors a copy of the Prospectus and afford the Investors an opportunity to review and comment on the Prospectus.

(e) At any time after being obligated to file a Resale Registration Shelf or Prospectus, or after any Resale Registration Shelf has become effective or a Prospectus filed with the Commission, the Company may defer the filing of or suspend the use of any such Resale Registration Shelf or Prospectus, upon giving written notice of such action to the Investors with a certificate signed by the Principal Executive Officer of the Company stating that in the good faith judgment of the Board, the filing or use of any such Resale Registration Shelf or Prospectus covering the Registrable Securities would be seriously detrimental to the Company or its stockholders at such time and that the Board concludes, as a result, that it is in the best interests of the Company and its stockholders to defer the filing or suspend the use of such Resale Registration Shelf or Prospectus at such time. The Company shall have the right to defer the filing of or suspend the use of such Resale Registration Shelf or Prospectus for a period of not more than one hundred twenty (120) days from the date the Company notifies the Investors of such deferral or suspension; provided that the Company shall not exercise the right contained in this Section 2.1(e) more than once in any 12 month period. In the case of the suspension of use of any effective Resale Registration Shelf or Prospectus, the Investors, immediately upon receipt of notice thereof from the Company, shall discontinue any offers or sales of Registrable Securities pursuant to such Resale Registration Shelf or Prospectus until advised in writing by the Company that the use of such Resale Registration Shelf or Prospectus may be resumed. In the case of a deferred Prospectus or Resale Registration Shelf filing, the Company shall provide prompt written notice to the Investors of (i) the Company's decision to file or seek effectiveness of the Prospectus or Resale Registration Shelf, as the case may be, following such deferral and (ii) in the case of a Resale Registration Shelf, the effectiveness of such Resale Registration Shelf. In the case of either a suspension of use of, or deferred filing of, any Resale Registration Shelf or Prospectus, the Company shall not, during the pendency of such suspension or deferral, be required to take any action hereunder (including any action pursuant to Section 2.2 hereof) with respect to the registration or sale of any Registrable Securities pursuant to any such Resale Registration Shelf, Company Registration Shelf or Prospectus.

(f) Subject to Section 2.2(e) below, any Resale Registration Shelf or Prospectus may include Other Securities, and may include securities of the Company being sold for the account of the Company; provided such Other Securities are excluded first from such Registration Statement in order to comply with any applicable laws or request from any government entity, The New York Stock Exchange or any applicable listing agency. For the avoidance of doubt, no Other Securities may be included in an underwritten offering pursuant to Section 2.2 without the consent of the Investors holding a majority of the shares of Registrable Securities included in such underwritten offering.

2.2 Sales and Underwritten Offerings of the Registrable Securities.

(a) Notwithstanding any provision contained herein to the contrary, the Investors, collectively, shall, subject to the limitations set forth in this Section 2.2, be permitted one underwritten public offering per calendar year, but no more than two underwritten public offerings in total, to effect the sale or distribution of Registrable Securities.

(b) If the Investors intend to effect an underwritten public offering pursuant to a Resale Registration Shelf or Company Registration Shelf to sell or otherwise distribute Registrable Securities, they shall so advise the Company and provide as much notice to the Company as reasonably practicable (and in any event not less than 15 business days prior to the Investors' request that the Company file a prospectus supplement to a Resale Registration Shelf or Company Registration Shelf).

(c) In connection with any offering initiated by the Investors pursuant to this Section 2.2 involving an underwriting of shares of Registrable Securities, the Investors holding a majority of the shares of Registrable Securities included in such underwritten offering shall be entitled to select the underwriter or underwriters for such offering, subject to the consent of the Company, such consent not to be unreasonably withheld, conditioned or delayed.

(d) In connection with any offering initiated by the Investors pursuant to this Section 2.2 involving an underwriting of shares of Registrable Securities, the Company shall not be required to include any of the Registrable Securities in such underwriting unless the Investors (i) enter into an underwriting agreement in customary form with the underwriter or underwriters, (ii) accept customary terms in such underwriting agreement with regard to representations and warranties relating to ownership of the Registrable Securities and authority and power to enter into such underwriting agreement and (iii) complete and execute all questionnaires, powers of attorney, custody agreements, indemnities and other documents as may be requested by such underwriter or underwriters. Further, the Company shall not be required to include any of the Registrable Securities in such underwriting if (Y) the underwriting agreement proposed by the underwriter or underwriters contains representations, warranties or conditions that are not reasonable in light of the Company's then-current business or (Z) the underwriter, underwriters or the Investors require the Company to participate in any marketing, road show or comparable activity that may be required to complete the orderly sale of shares by the underwriter or underwriters.

(e) If the total amount of securities to be sold in any offering initiated by the Investors pursuant to this Section 2.2 involving an underwriting of shares of Registrable Securities exceeds the amount that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities and securities of Other Selling Stockholders (subject in each case to the cutback provisions set forth in this Section 2.2(e)), that the underwriters and the Company determine in their sole discretion shall not jeopardize the success of the offering. If the underwritten public offering has been requested pursuant to Section 2.2(a) hereof, the number of shares that are entitled to be included in the registration and underwriting shall be allocated in the following manner: (i) first, securities of Other Selling Stockholders requested to be included in such registration shall be excluded, (ii) second, shares of Company equity securities that the Company desires to include in such registration shall be excluded, and (iii) third, Registrable Securities requested to be included in such registration by the Investors shall be excluded, and the Investors shall be excluded in proportion to the respective amounts requested to be included. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round down the number of shares allocated to any of the selling stockholder (including the Investors) to the nearest 100 shares.

2.3 Fees and Expenses. Except as otherwise may be agreed upon between the Investors holding a majority of the shares of Registrable Securities included in any registration and the Company, all Registration Expenses incurred in connection with registrations pursuant to this Agreement shall be borne by the Company. All Selling Expenses relating to securities registered on behalf of the Investors shall be borne by the Investors.

2.4 Registration Procedures. In the case of each registration of Registrable Securities effected by the Company pursuant to Section 2.1 hereof, the Company shall keep the involved Investors advised as to the initiation of each such registration and as to the status thereof. The Company shall use its reasonable best efforts, within the limits set forth in this Section 2.4, to:

(a) prepare and file with the Commission such amendments and supplements to such Registration Statement and the prospectuses used in connection with such Registration Statement as may be necessary to keep such Registration Statement effective and current and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement;

(b) furnish to the involved Investors such numbers of copies of a prospectus, including preliminary prospectuses, in conformity with the requirements of the Securities Act, and such other documents as the involved Investors may reasonably request in order to facilitate the disposition of Registrable Securities;

(c) use its reasonable best efforts to register and qualify the Registrable Securities covered by such Registration Statement under such other securities or blue sky laws of such jurisdictions in the United States as shall be reasonably requested by the involved Investors, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(d) in the event of any underwritten public offering, and subject to Section 2.2(d), enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering and take such other usual and customary action as the involved Investors may reasonably request in order to facilitate the disposition of such Registrable Securities;

(e) notify the involved Investors at any time when a prospectus relating to a Registration Statement covering any Registrable Securities is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing. The Company shall use its reasonable best efforts to amend or supplement such prospectus in order to cause such prospectus not to include 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 therein not misleading in the light of the circumstances then existing;

(f) provide a transfer agent and registrar for all Registrable Securities registered pursuant to such Registration Statement and, if required, a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(g) if requested by an Investor, use reasonable best efforts to cause the Company's transfer agent to remove any restrictive legend from any Registrable Securities being transferred by an Investor pursuant to a Resale Registration Shelf or Company Registration Shelf, within two business days following such request;

(h) cause to be furnished, at the request of the involved Investors, on the date that Registrable Securities are delivered to underwriters for sale in connection with an underwritten offering pursuant to this Agreement, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, and (ii) a letter or letters from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters; and

(i) cause all such Registrable Securities included in a Registration Statement pursuant to this Agreement to be listed on each securities exchange or other securities trading markets on which Common Stock is then listed.

2.5 The Investors' Obligations.

(a) The Investors agree that, upon receipt of any notice from the Company of the occurrence of any event of the kind described in Section 2.4(e) hereof, the Investors shall immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement covering such Registrable Securities until the Investors' receipt of the copies of the supplemented or amended prospectus contemplated by Section 2.4(e) hereof or receipt of notice that no supplement or amendment is required and that the Investors' disposition of the Registrable Securities may be resumed. The Company may provide appropriate stop orders to enforce the provisions of this Section 2.5(a).

(b) The Investors covenant and agree that they shall comply with the prospectus delivery requirements of the Securities Act as applicable to them or an exemption therefrom in connection with sales of Registrable Securities pursuant to any Registration Statement filed by the Company pursuant to this Agreement.

2.6 Indemnification.

(a) To the extent permitted by law, the Company shall indemnify the Investors, and, as applicable, their officers, directors, and constituent partners, legal counsel for each Investor and each Person controlling the Investors, with respect to which registration, related qualification, or related compliance of Registrable Securities has been effected pursuant to this Agreement, and each underwriter, if any, and each Person who controls any underwriter within the meaning of the Securities Act against all claims, losses, damages, or liabilities (or actions in respect thereof) to the extent such claims, losses, damages, or liabilities arise out of or are based upon (i) any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus or other document (including any related Registration Statement) incident to any such registration, qualification, or compliance, or (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the

Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification, or compliance; and the Company shall pay as incurred to the Investors, each such underwriter, and each Person who controls the Investors or underwriter, any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action; provided, however, that the indemnity contained in this Section 2.6(a) shall not apply to amounts paid in settlement of any such claim, loss, damage, liability, or action if settlement is effected without the consent of the Company (which consent shall not unreasonably be withheld); and provided, further, that the Company shall not be liable in any such case to the extent that any such claim, loss, damage, liability, or expense arises out of or is based upon any violation by such Investor of the obligations set forth in Section 2.5 hereof or any untrue statement or omission contained in such prospectus or other document based upon written information furnished to the Company by the Investors, such underwriter, or such controlling Person and stated to be for use therein.

(b) To the extent permitted by law, each Investor (severally and not jointly) shall, if Registrable Securities held by such Investor are included for sale in the registration and related qualification and compliance effected pursuant to this Agreement, indemnify the Company, each of its directors, each officer of the Company who signs the applicable Registration Statement, each legal counsel and each underwriter of the Company's securities covered by such a Registration Statement, and each Person who controls the Company or such underwriter within the meaning of the Securities Act against all claims, losses, damages, and liabilities (or actions in respect thereof) arising out of or based upon (i) any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, or related document, or (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by such Investor of Section 2.5 hereof, the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law applicable to such Investor and relating to action or inaction required of such Investor in connection with any such registration and related qualification and compliance, and shall pay as incurred to such persons, any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case only to the extent that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in (and such violation pertains to) such Registration Statement or related document in reliance upon and in conformity with written information furnished to the Company by such Investor and stated to be specifically for use therein; provided, however, that the indemnity contained in this Section 2.6(b) shall not apply to amounts paid in settlement of any such claim, loss, damage, liability, or action if settlement is effected without the consent of such Investor (which consent shall not unreasonably be withheld); and provided, further, that such Investor's liability under this Section 2.6(b) (when combined with any amounts such Investor is liable for under Section 2.6(b)) shall not exceed such Investor's net proceeds from the offering of securities made in connection with such registration.

(c) Promptly after receipt by an indemnified party under this Section 2.6 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party under this Section 2.6, notify the indemnifying party in writing of the commencement thereof and generally summarize such action. The indemnifying party shall have the right to participate in and to assume the defense of such claim; provided, however, that the indemnifying party shall be entitled to select counsel for the defense of such claim with the approval of any parties entitled to indemnification, which approval shall not be unreasonably withheld; provided further, however, that if either party reasonably determines that there may be a conflict between the position of the Company and the Investors in conducting the defense of such action, suit, or proceeding by reason of recognized claims for indemnity under this Section 2.6, then counsel for such party shall be entitled to conduct the defense to the extent reasonably determined by such counsel to be necessary to protect the interest of such party. The failure to notify an indemnifying party promptly of the commencement of any such action, if prejudicial to the ability of the indemnifying party to defend such action, shall relieve such indemnifying party, to the extent so prejudiced, of any liability to the indemnified party under this Section 2.6, but the omission so to notify the indemnifying party shall not relieve such party of any liability that such party may have to any indemnified party otherwise than under this Section 2.6.

(d) If the indemnification provided for in this Section 2.6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage, or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission. In no event, however, shall (i) any amount due for contribution hereunder be in excess of the amount that would otherwise be due under Section 2.6(a) or Section 2.6(b), as applicable, based on the limitations of such provisions, and (ii) a Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) be entitled to contribution from a Person who was not guilty of such fraudulent misrepresentation.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with an underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control; provided, however, that the failure of the underwriting agreement to provide for or address a matter provided for or addressed by the foregoing provisions shall not be a conflict between the underwriting agreement and the foregoing provisions.

(f) The obligations of the Company and the Investors under this Section 2.6 shall survive the completion of any offering of Registrable Securities in a Registration Statement under this Agreement or otherwise.

2.7 Information. The Investors shall furnish to the Company such information regarding the Investors and the distribution proposed by the Investors as the Company may reasonably request and as shall be reasonably required in connection with any registration referred to in this Agreement. The Investors agree to, as promptly as practicable (and in any event prior to any sales made pursuant to a prospectus), furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by the Investors not misleading. The Investors agree to keep confidential the receipt of any notice received pursuant to Section 2.4(e) and the contents thereof, except as required pursuant to applicable law. Notwithstanding anything to the contrary herein, the Company shall be under no obligation to name the Investors in any Registration Statement if the Investors have not provided the information required by this Section 2.7 with respect to the Investors as a selling securityholder in such Registration Statement or any related prospectus.

2.8 Rule 144 Requirements. With a view to making available to the Investors the benefits of Rule 144 and any other rule or regulation of the Commission that may at any time permit the Investors to sell Registrable Securities to the public without registration, the Company agrees to use its reasonable best efforts to:

- (a) make and keep public information available, as those terms are understood and defined in Rule 144 at all times after the date hereof;
- (b) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act;
- (c) prior to the filing of the Registration Statement or any amendment thereto (whether pre-effective or post-effective), and prior to the filing of any prospectus or prospectus supplement related thereto, to provide the Investors with copies of all of the pages thereof (if any) that reference the Investors; and
- (d) furnish to any Investor, so long as the Investor owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company with the Commission, and (iii) such other information as may be reasonably requested by an Investor in availing itself of any rule or regulation of the Commission which permits an Investor to sell any such securities without registration.

2.9 Termination of Status as Registrable Securities. The Registrable Securities shall cease to be Registrable Securities upon the earliest to occur of the following events: (i) such Registrable Securities have been sold pursuant to an effective Registration Statement; (ii) such Registrable Securities have been sold by the Investors pursuant to Rule 144 (or other similar rule), (iii) such Registrable Securities may be resold by the Investor holding such Registrable Securities without limitations as to volume or manner of sale pursuant to Rule 144; or (iv) ten (10) years after the date of this Agreement.

3.5 Governing Law; Jurisdiction; Venue; Jury Trial.

(a) This Agreement shall be governed by, and construed in accordance with, the law of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

(b) Each of the Company and the Investors irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, New York and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement and the transactions contemplated herein, or for recognition or enforcement of any judgment, and each of the Company and the Investors irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in such federal court. Each of the Company and the Investors hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Each of the Company and the Investors irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement and the transactions contemplated herein in any court referred to in Section 3.5(b) hereof. Each of the Company and the Investors hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) EACH OF THE COMPANY AND THE INVESTORS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF THE COMPANY AND THE INVESTORS (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT EACH OF THE COMPANY AND THE INVESTORS HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

3.6 Successors, Assigns and Transferees. Any and all rights, duties and obligations hereunder shall not be assigned, transferred, delegated or sublicensed by (i) any Investor without the prior written consent of the Company or (ii) the Company without Required Investor Approval; provided, however, that the Investors shall be entitled to transfer Registrable Securities to one or more of their Affiliates and, solely in connection therewith, may assign their

rights hereunder in respect of such transferred Registrable Securities, in each case, so long as such Investor is not relieved of any liability or obligations hereunder, without the prior consent of the Company. Any transfer or assignment made other than as provided in the first sentence of this Section 3.6 shall be null and void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, permitted assigns, heirs, executors and administrators of the parties hereto.

3.7 Entire Agreement. This Agreement, together with any exhibits hereto, constitute the entire agreement between the parties relating to the subject matter hereof and all previous agreements or arrangements between the parties, written or oral, relating to the subject matter hereof are superseded.

3.8 Waiver. No failure on the part of either party hereto to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of either party hereto in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver thereof; 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.

3.9 Severability. If any part of this Agreement is declared invalid or unenforceable by any court of competent jurisdiction, such declaration shall not affect the remainder of the Agreement and the invalidated provision shall be revised in a manner that shall render such provision valid while preserving the parties' original intent to the maximum extent possible.

3.10 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

3.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties that execute such counterparts (including by facsimile or other electronic means), and all of which together shall constitute one instrument.

3.12 Term and Termination. The Investors' rights to demand the registration of the Registrable Securities under this Agreement, as well as the Company's obligations under Section 2.2 hereof, shall terminate automatically once all Registrable Securities cease to be Registrable Securities pursuant to the terms of Section 2.9 of this Agreement.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Registration Rights Agreement effective as of the day, month and year first above written.

COMPANY:

INVITAE CORPORATION

By: /s/ Sean George

Name: Sean George

Title: President and Chief Executive Officer

[Signature Page to Registration Rights Agreement]

**SIGNATURE PAGE TO
INVITAE CORPORATION
AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

The undersigned hereby executes and delivers the Amended and Restated Registration Rights Agreement (the “Amendment”) to which this additional signature page is attached which, together with all counterparts thereto and signature pages of the other parties with respect thereto, shall constitute one and the same document in accordance with the terms of the Amendment.

/s/ Randal W. Scott

Randal W. Scott

[Signature Page to Registration Rights Agreement]

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BAKER BROTHERS LIFE SCIENCES, L.P.

By: BAKER BROS. ADVISORS LP,
management company and investment adviser to **Baker
Brothers Life Sciences, L.P.**, pursuant to authority granted to it
by Baker Brothers Life Sciences Capital, L.P., general partner to
Baker Brothers Life Sciences, L.P., and not as the general partner

By: /s/ Scott Lessing
Scott Lessing, President

[Signature Page to Registration Rights Agreement]

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667, L.P. (account #1)

By: BAKER BROS. ADVISORS LP,
management company and investment adviser to **667, L.P.**,
pursuant to authority granted to it by Baker Biotech Capital, L.P.,
general partner to 667, L.P., and not as the general partner

By: /s/ Scott Lessing
Scott Lessing, President

[Signature Page to Registration Rights Agreement]

**SIGNATURE PAGE TO
INVITAE CORPORATION
AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

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667, L.P. (account #2)

By: BAKER BROS. ADVISORS LP,
management company and investment adviser to **667, L.P.**,
pursuant to authority granted to it by Baker Biotech Capital, L.P.,
general partner to 667, L.P., and not as the general partner

By: /s/ Scott Lessing
Scott Lessing, President

[Signature Page to Registration Rights Agreement]

**SIGNATURE PAGE TO
INVITAE CORPORATION
AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

The undersigned hereby execute and deliver the Amended and Restated Registration Rights Agreement (the “Amendment”) to which this additional signature page is attached which, together with all counterparts thereto and signature pages of the other parties with respect thereto, shall constitute one and the same document in accordance with the terms of the Amendment.

14159, L.P.

By: BAKER BROS. ADVISORS LP,
management company and investment adviser to **14159, L.P.**,
pursuant to authority granted to it by 14159 Capital, L.P., general
partner to 14159, L.P., and not as the general partner

By: /s/ Scott Lessing
Scott Lessing, President

[Signature Page to Registration Rights Agreement]

Schedule A

The Investors

Randal W. Scott
Baker Brothers Life Sciences, L.P.
667, L.P. (account #1)
667, L.P. (account #2)
14159, L.P.



Invitae Announces \$73.5 Million Private Placement Offering to Fuel Strategic Growth Opportunities and Reports Preliminary Second Quarter Financial Results

- *Increasing momentum in Invitae's business combined with offering proceeds position company to execute on near-term acquisition opportunities* —
- *Preliminary second quarter results demonstrate strong volume, revenue growth* —
- *Management raising guidance on 2017 volume to 120,000-130,000 samples* —

SAN FRANCISCO, July 31, 2017 – Invitae Corporation (NYSE: NVTX), one of the fastest growing genetic information companies, has entered into a definitive agreement to sell \$73.5 million of Invitae stock in a private placement. The private placement is being led by existing investors with significant participation from multiple new investors. The placement is expected to provide Invitae with added resources and flexibility as it builds a comprehensive offering to accelerate the use of genetic information in mainstream medical care.

Net proceeds are intended to support general corporate purposes, and additionally, to support acceleration of Invitae's strategic growth plan, which includes actively pursuing acquisitions that can provide access to new markets, expansion of the company's test menu, and contribute positively to cash flow after two to three quarters.

Cowen and Company, LLC and Leerink Partners LLC are acting as joint placement agents for the transaction.

"Our strong balance sheet, ongoing volume and revenue growth position us well to accelerate our progress toward becoming the leading provider of genetic information services," said Sean George, chief executive officer of Invitae. "Invitae has built a robust genetic information platform designed to tackle the complex challenges in medical interpretation, investing in tools that are precise, customized and scalable. With this infrastructure fueling continued growth across all categories of our adult inherited testing, we can begin opportunistically expanding our platform content and services through new industry partnerships and strategic acquisitions."

Building on Strength of Growing Business: Preliminary Second Quarter 2017 Results

Invitae continued to see strong growth and increased momentum in its core testing business in the second quarter of 2017. As anticipated, revenue ramp has begun to outpace volume growth as covered lives increased to over 200 million and managed care contracts signed in 2016 become operational. Preliminary results are as follows:

-
- Generated revenue of \$14.3 in the second quarter of 2017, a 39% increase over the first quarter of 2017 revenue of \$10.3 million and a 157% increase over the second quarter of 2016 revenue of \$5.6 million.
 - Accessioned more than 30,400 samples in the second quarter of 2017, representing a 17% increase over the first quarter of 2017 and 139% increase over the second quarter of 2016.
 - Reduced cost of goods sold (COGS) per sample accessioned from \$500 in the second quarter of 2016 to below \$345 in the second quarter of 2017. Total cost of goods sold totaled \$10.5 million in the second quarter of 2017, compared to \$6.5 million in the second quarter of 2016.
 - Significantly increased gross profit to approximately \$3.1 million in the second quarter of 2017, up from \$0.4 million in the first quarter of 2017 and compared to a negative gross profit of \$0.9 million in the second quarter of 2016.

Total operating expenses for the second quarter of 2017, excluding cost of test revenue, were \$31.9 million compared to \$23.9 million in the second quarter of 2016. Second quarter operating expenses included \$8.9 million in non-cash expenses, including equity compensation and depreciation. For the second quarter of 2017, Invitae reported a net loss of \$28.6 million, or a \$0.66 loss per share, compared to a net loss of \$24.8 million in the second quarter of 2016, or a \$0.77 loss per share.

As of June 30, 2017, Invitae's cash, cash equivalents, restricted cash, and marketable securities totaled \$80.4 million, reflecting a decrease in cash burn of over \$2 million compared to the first quarter of 2017.

Private Placement

Under the agreement, the investors will purchase an aggregate of 8,647,058 shares of common stock and convertible preferred stock at a purchase price of \$8.50 per share. The preferred stock, which is a common stock equivalent but non-voting and with a blocker on conversion into common stock if the holder would exceed a specified threshold of voting security ownership, will be issued to certain existing stockholders. The private placement is expected to close on or about August 3, 2017, subject to the satisfaction of customary closing conditions.

The securities to be sold in the private placement have not been registered under the Securities Act of 1933, as amended, or applicable state securities laws and may not be offered or sold in the United States absent registration under the Securities Act or an applicable exemption from such registration requirements. Invitae has agreed to file one or more registration statements with the Securities and Exchange Commission covering the resale of the shares of common stock, and common stock underlying the convertible preferred stock, sold in the private placement, as well as other shares of common stock previously held by certain investors participating in the private placement.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

About Invitae

Invitae Corporation ([NYSE: NVTA](#)) is one of the fastest growing genetic information companies in the United States. Invitae's mission is to bring comprehensive genetic information into mainstream medical practice to improve the quality of healthcare for billions of people. Invitae's goal is to aggregate the world's genetic tests into a single service with higher quality, faster turnaround time, and lower prices.

Safe Harbor Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including statements relating to the company's expectations regarding preliminary second quarter 2017 results and full year 2017 volume guidance; the anticipated gross proceeds and uses of proceeds from the proposed offering; the expected closing date of the proposed offering; the company's business strategy, including its acquisition growth strategy; and the company's plans to accelerate its progress toward becoming the leading provider of genetic information services. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially, and reported results should not be considered as an indication of future performance. These risks and uncertainties include, but are not limited to: risks related to whether the company will be able to satisfy the conditions required to close the private placement; the ability of the company to execute its strategy, including its acquisition strategy; the completion of the company's quarterly review process and publication of final second quarter 2017 results; the company's ability to compete; the company's failure to manage growth effectively; the company's ability to develop and commercialize new tests and expand into new markets; risks associated with the company's limited experience with respect to acquisitions; and the other risks set forth in the company's filings with the Securities and Exchange Commission, including the risks set forth in the company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2017. These forward-looking statements speak only as of the date hereof, and Invitae Corporation disclaims any obligation to update these forward-looking statements.

NOTE: Invitae and the Invitae logo are trademarks of Invitae Corporation. All other trademarks and service marks are the property of their respective owners.

Source: Invitae Corporation
Contact:
Kate McNeil
ir@invitae.com
347-204-4226

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Invitae Acquiring Good Start Genetics and CombiMatrix, Adding Comprehensive Reproductive Health Capabilities to Serve Every Stage of Life

- *Good Start Genetics Provides Best-in-Class Carrier and NGS Preimplantation Screening to Leading IVF Centers* —
- *CombiMatrix Trusted for Advanced DNA Diagnostics by Reproductive Health and Pediatric Specialists* —
- *Invitae to Host Webcast for Investors on August 1 at 8 am ET / 5 am PT* —

SAN FRANCISCO, July 31, 2017 – Invitae Corporation (NYSE: NVTA), one of the fastest growing genetic information companies, today announced two acquisitions to establish a leading position in family health genetic information services. Invitae has entered into a definitive agreement to acquire privately held Good Start Genetics, a molecular diagnostics company focused on preimplantation and carrier screening for inherited disorders. Invitae also has entered into a definitive agreement to acquire CombiMatrix (NASDAQ: CBMX), a company which specializes in prenatal diagnosis, miscarriage analysis and pediatric developmental disorders. The acquisitions will establish Invitae as a comprehensive provider of genetic information throughout every stage of life.

“This is a transformative moment for Invitae, for our industry, and—importantly—for patients. By acquiring Good Start and CombiMatrix, Invitae intends to create the industry’s first comprehensive genetic information platform providing high-quality, affordable genetic information coupled with world-class clinical expertise to inform healthcare decisions throughout every stage of an individual’s life,” said Sean George, chief executive officer of Invitae. “We believe the strength of our existing platform, strategic acquisitions like these and our network of partners will fuel continued growth and further establish Invitae as a leading genetic information service provider.”

Good Start Genetics: Genetic Information for Parents-to-Be

Good Start’s suite of offerings includes carrier screening and preimplantation embryo testing, which provides women, their partners and their clinicians with insightful and actionable information to promote successful pregnancies and help build healthy families.

“We are excited to bring our world-class, proprietary approach to genetic testing for women who are pregnant or planning to become pregnant to the Invitae platform,” said Jeffrey Lubert, president and chief executive officer of Good Start. “Our companies share a belief in the power of genetic information to transform people’s lives and a common commitment to making that information affordable and available to all. Today, we are thrilled to bring the momentum we’ve built in IVF to Invitae. Together we will enhance our combined offerings in this important category and bring that comprehensive solution to our customers for the benefit of growing audiences everywhere.”

Good Start was the first to bring next-generation sequencing to reproductive health and, with its three primary product lines, has processed 1.7 million tests since its commercial launch in 2012.

- **In-Clinic Carrier Screening:** Its flagship genetic carrier screening service, GeneVu, includes a comprehensive menu of highly-accurate diagnostic tests to assess known and novel mutations that cause inherited genetic disorders.
- **At-Home Carrier Screening:** The recently launched VeriYou delivers physician-ordered, carrier screening via an at-home, affordable test service with genetic counseling and is available through Amazon.com, Inc.
- **Preimplantation Screening:** Its proprietary and advanced preimplantation genetic screening test, EmbryVu, based on technologies exclusively licensed from Johns Hopkins University School of Medicine, is designed to provide an affordable testing service for individuals using assisted reproduction to achieve a healthy pregnancy.

Good Start has succeeded in making these tests available at scale via a next generation sequencing (NGS) platform that simplifies workflow and lowers costs while preserving quality. Good Start complements these offerings with world-class customer care and access to genetic counseling.

Under the definitive agreement, Invitae will acquire Good Start through the issuance of up to approximately 1.65 million shares of Invitae common stock (subject to a partial hold-back to cover indemnification liabilities), the payment of approximately \$18.3 million in cash consideration to eliminate Good Start's outstanding secured debt, and the payment or assumption of approximately \$6.0 million in Good Start pre-closing and closing-related liabilities and obligations. The proposed acquisition of Good Start is expected to close in the first part of August, subject to customary closing conditions. Leerink Partners LLC is serving as financial adviser to Invitae on the acquisition of Good Start, and Pillsbury Winthrop Shaw Pittman LLP is serving as legal adviser.

CombiMatrix Corporation: Advanced Diagnostics for Women and Newborns

The acquisition of CombiMatrix will complement Invitae and Good Start's genetic information services to establish a category-leading menu with the breadth and depth needed to provide comprehensive support for women, their partners and clinicians to use genetic information when considering their reproductive health options.

"We are excited to be joining forces with Invitae. This combination of CombiMatrix, a recognized leader in genetic testing for Miscarriage Analysis, with one of the fastest growing genetic information companies in Invitae provides a tremendous opportunity to accelerate the growth of both companies. The information that we will be able to provide as a combined entity will enable clinicians to help guide women through some of the most important health decisions they make along the continuum of care in family planning," says Mark McDonough, president and chief executive officer of CombiMatrix. "We are eager to combine our complementary product portfolio, expertise and relationships to create the market leader in family health genetics."

CombiMatrix is recognized as the leader in miscarriage analysis testing and offers DNA-based testing for the detection of genetic abnormalities beyond what can be identified through traditional methodologies for use in preimplantation genetic diagnostics, carrier screening, prenatal diagnosis, miscarriage analysis and the diagnosis of pediatric developmental disorders. CombiMatrix's services include advanced technologies, such as single nucleotide polymorphism chromosomal microarray analysis, next generation sequencing, and long-standing expertise handling a variety of technically challenging sample types. CombiMatrix's 2016 financial performance included \$12.8 million in revenue, an increase of 28% over 2015. This momentum continued with CombiMatrix reporting a 27% increase in first quarter 2017 revenue compared to the first quarter of 2016, driven by a 32% increase in its reproductive health business.

Under the definitive agreement, the consideration payable to the holders of currently outstanding shares of CombiMatrix common stock, as well as currently outstanding restricted stock units and in-the-money options, is \$27 million in shares of Invitae common stock based upon the 30 trading day trailing average closing price immediately preceding the agreement date, or approximately 2.85 million shares, subject to adjustment based upon a net cash calculation for CombiMatrix at the time of the acquisition. The definitive agreement contemplates an exchange offer for the outstanding CombiMatrix Series F warrants, in which Invitae would offer up to approximately \$6.0 million in shares of Invitae, or approximately 0.63 million shares, and participation by holders of at least 90% of the Series F warrants is a condition to Invitae's obligation to consummate the acquisition. The specifics of the warrant exchange offer have not yet been determined by Invitae. To the extent the Series F warrants are not exchanged and are either exercised or assumed as part of the acquisition, the consideration payable by Invitae could increase by up to approximately \$15.0 million in shares of Invitae, or approximately 1.58 million shares, subject to adjustment based upon a net cash calculation for CombiMatrix at the time of the acquisition. Exercise proceeds from the Series F warrants could amount to approximately \$10.7 million if all such warrants were exercised, which would stay with CombiMatrix as a wholly owned subsidiary of Invitae. The proposed acquisition of CombiMatrix is expected to close in the fourth quarter of 2017, subject to customary closing conditions, including CombiMatrix stockholder approval, as well as the warrant exchange participation threshold noted above. Torreya Partners acted as exclusive financial adviser to CombiMatrix on the agreement.

Invitae to Host Investor Conference Call

Management will host a webinar and conference call on August 1, 2017 at 8:00 a.m. Eastern / 5:00 a.m. Pacific to discuss these transactions in detail. The dial-in numbers for the conference call are (844) 579-6824 for domestic callers and (763) 488-9145 for international callers, and the reservation number for both is 62580208.

The live webinar and conference call may be accessed by visiting the investors section of Invitae's website at ir.invitae.com. A replay of the webinar will be available shortly after the conclusion of the call and will be archived on Invitae's website.

About Invitae

Invitae Corporation ([NYSE: NVTA](https://www.nyse.com/quote/NYSE:NVTA)) is one of the fastest growing genetic information companies in the United States. Invitae's mission is to bring comprehensive genetic information into mainstream medical practice to improve the quality of healthcare for billions of people. Invitae's goal is to aggregate the world's genetic tests into a single service with higher quality, faster turnaround time, and lower prices. For more information, visit our website at [invitae.com](https://www.invitae.com).

About Good Start Genetics

Good Start Genetics is dedicated to women's health and helping grow healthy families through its best-in-class genetics offerings. Using advanced clinical sequencing, proprietary methods and information tailored to the individual, the Company's suite of offerings arms clinicians and patients with insightful and actionable information to promote successful pregnancies and help build healthy families. The Company's product portfolio, including GeneVu, EmbryVu and VeriYou, encompasses a multifaceted approach to genetic testing, featuring solutions for both preimplantation and carrier screening, while offering comprehensive and flexible testing options helping a wider range of couples find their paths to pregnancy at significantly lower costs. Good Start Genetics complements these offerings with world class customer care and genetic counseling to help families stay well-informed and be better prepared for tomorrow. For more information, please visit www.goodstartgenetics.com.

About CombiMatrix

CombiMatrix Corporation (NASDAQ: CBMX) provides sophisticated molecular diagnostic solutions and comprehensive clinical support to foster the highest quality in patient care. CombiMatrix specializes in pre-implantation genetic diagnostics and screening, prenatal diagnosis, miscarriage analysis and pediatric developmental disorders, offering DNA-based testing for the detection of genetic abnormalities beyond what can be identified through traditional methodologies. CombiMatrix testing focuses on advanced technologies, including single nucleotide polymorphism chromosomal microarray analysis, next generation sequencing, fluorescent in situ hybridization and high resolution karyotyping. For more information, please visit www.combimatrix.com.

Safe Harbor Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including statements relating to the potential benefits and synergies from the proposed acquisitions; statements relating to the structure, timing, stockholder approval and/or completion of the proposed mergers; Invitae's intention to file with the SEC registration statements on Form S-4 for the CombiMatrix merger and the warrant exchange offer; Invitae's intention to conduct the warrant exchange offer; the expected closing dates of the proposed transactions; Invitae's future product offerings and growth potential; and Invitae's business strategy, including its acquisition growth strategy, and its beliefs regarding the ways in which the proposed acquisitions will contribute to that strategy. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially, and reported results should not be considered as an indication of future performance. These risks and uncertainties include, but are not limited to: risks and uncertainties associated

with the parties' ability to satisfy the conditions precedent to the consummation of the proposed transactions, including stockholder approval of and the ability to consummate the proposed CombiMatrix merger and the proposed Good Start merger, the ability of Invitae to conduct the warrant exchange offer, and the participation by CombiMatrix Series F warrant holders of the 90% minimum participation; the occurrence of any event that could give rise to the termination of the merger agreements; unanticipated difficulties or expenditures relating to the proposed transactions; legal proceedings that may be instituted against the parties following announcement of the proposed transactions; disruptions of current plans and operations caused by the announcement or pendency of the proposed transactions; the risk that expected benefits, synergies and growth prospects resulting from the proposed transactions may not be achieved in a timely manner, or at all; the risk the businesses of CombiMatrix and/or Good Start may not be successfully integrated with Invitae's business following the respective closings; potential difficulties in employee retention as a result of the announcement and pendency of the proposed transactions; the reaction of customers and potential customers, payers, partners and competitors to the announcement of the proposed transactions; Invitae's failure to manage growth effectively; Invitae's ability to develop and commercialize new tests and expand into new markets; risks associated with Invitae's limited experience with respect to acquisitions; and the other risks set forth in Invitae's filings with the Securities and Exchange Commission, including the risks set forth in its Quarterly Report on Form 10-Q for the quarter ended March 31, 2017. These forward-looking statements speak only as of the date hereof, and Invitae Corporation disclaims any obligation to update these forward-looking statements.

Additional Information about the CombiMatrix Merger and Where to Find It

In connection with the CombiMatrix Merger, Invitae Corporation (the "Company") and CombiMatrix intend to file relevant materials with the Securities and Exchange Commission (the "SEC"), including (a) a registration statement on Form S-4 that will contain a proxy statement/prospectus for CombiMatrix to solicit stockholder approval of the CombiMatrix Merger and (b) a registration statement on Form S-4 that will contain offer documents for the Company to conduct the Warrant Exchange Offer. Investors and security holders of the Company and CombiMatrix are urged to read these materials when they become available because they will contain important information about the Company and CombiMatrix as well as the CombiMatrix Merger and the Warrant Exchange Offer. The proxy statement/prospectus and the offering documents and other relevant materials (when they become available), and any other documents filed by the Company or CombiMatrix with the SEC, may be obtained free of charge at the SEC web site at www.sec.gov. In addition, investors and security holders may obtain free copies of the documents (i) filed with the SEC by the Company, by directing a written request to: Invitae Corporation, 1400 16th Street, San Francisco, California 94103, Attention: Investor Relations or (ii) filed with the SEC by CombiMatrix, by directing a written request to: CombiMatrix Corporation, 310 Goddard, Suite 150, Irvine, California 92618, Attention: Investor Relations. Investors and security holders are urged to read the proxy statement/prospectus, the offering documents and the other relevant materials when they become available before making any voting or investment decision with respect to the CombiMatrix Merger or the Warrant Exchange Offer.

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 offering of securities in connection with the CombiMatrix Merger shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Participants in the Solicitation

The Company and CombiMatrix and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of CombiMatrix in connection with the CombiMatrix Merger. Information regarding the special interests of these directors and executive officers in the CombiMatrix Merger will be included in the proxy statement/prospectus referred to above. Additional information regarding the Company's directors and executive officers is also included in the Company's Annual Report on Form 10-K for the year ended December 31, 2016 and the proxy statement for the Company's 2017 annual meeting of stockholders. Additional information regarding CombiMatrix's directors and executive officers is also included in CombiMatrix's Annual Report on Form 10-K for the year ended December 31, 2016 and the proxy statement for CombiMatrix's 2017 annual meeting of stockholders. These documents are available free of charge at the SEC's web site (www.sec.gov) and from Investor Relations at the Company or CombiMatrix at the addresses set forth above.

NOTE: Invitae and the Invitae logo are trademarks of Invitae Corporation. All other trademarks and service marks are the property of their respective owners.

Source: Invitae Corporation

Contact:

Kate McNeil

ir@invitae.com

347-204-4226

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