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

FORM 8-K

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

Date of Report (Date of earliest event reported): January 2, 2019

CELGENE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	001-34912 (Commission File Number)	22-2711928 (IRS Employer Identification No.)

86 Morris Avenue Summit, New Jersey (Address of principal executive offices)	07901 (Zip Code)

Registrant's telephone number, including area code: (908) 673-9000

☒ 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-4c))

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 .**

Merger Agreement

On January 2, 2019, Celgene Corporation ("Celgene") entered into an Agreement and Plan of Merger (the "Merger Agreement") with Bristol-Myers Squibb Company ("BMS") and Burgundy Merger Sub, Inc., a wholly owned subsidiary of BMS ("Merger Sub"). The Merger Agreement provides, among other things, that on the terms and subject to the conditions set forth therein, Merger Sub will merge with and into Celgene, with Celgene surviving as a wholly owned subsidiary of BMS (the "Merger").

In the Merger, each share of Celgene common stock issued and outstanding immediately prior to the effective time of the Merger (other than certain excluded shares as described in the Merger Agreement) will automatically be converted into the right to receive (1) $50.00 in cash, without interest, (2) one share of BMS common stock and (3) one tradeable contingent value right (a "CVR") representing the right to receive $9.00 in cash if a specified set of milestones is achieved, as set forth in the CVR Agreement (as defined and described below).

Completion of the Merger is subject to customary closing conditions, including (1) the adoption of the Merger Agreement by a majority of the holders of the outstanding shares of Celgene common stock, (2) approval of the issuance of BMS common stock issued in the Merger by a majority of the votes cast by the BMS stockholders on the matter, (3) approval for listing on the New York Stock Exchange of the BMS common stock and the CVRs to be issued in the Merger, (4) the expiration or early termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the approval of the Merger under the antitrust laws of other specified jurisdictions, (5) accuracy of the other party's representations and warranties, subject to certain materiality standards set forth in the Merger Agreement and (6) compliance in all material respects with the other party's obligations under the Merger Agreement.

Either Celgene or BMS may terminate the Merger Agreement in certain circumstances, including if (1) the Merger is not completed by January 2, 2020, subject to extension by either party in certain circumstances in the event that any required regulatory approval is not obtained, (2) Celgene's stockholders fail to adopt the Merger Agreement, (3) BMS's stockholders fail to approve the share issuance in connection with the Merger, (4) a governmental authority of competent jurisdiction has issued a final non-appealable governmental order prohibiting the Merger, (5) the other party breaches its representations, warranties or covenants in the Merger Agreement in a way that would entitle the party seeking to terminate the Merger Agreement not to consummate the Merger, subject to the right of the breaching party to cure the breach, (6) subject to compliance with specified process and notice requirements, such party terminates the Merger Agreement in order to enter into an agreement providing for, in the case of Celgene, a "Company Superior Proposal" or, in the case of BMS a "Parent Superior Proposal" (each as defined in the Merger Agreement), or (7) the other party's board of directors has changed its recommendation in favor of the Merger. In the event of a termination of the Merger Agreement under certain specified circumstances, including termination by Celgene to enter into an agreement providing for a Company Superior Proposal, or a termination by BMS following a change in recommendation by Celgene's board of directors, Celgene may be required to pay BMS a termination fee equal to $2.2 billion. In the event of a termination of the Merger Agreement under certain specified circumstances, including termination by BMS to enter into an agreement providing for a Parent Superior Proposal, or a termination by Celgene following a change in recommendation by BMS's board of directors, BMS may be required to pay Celgene a termination fee equal to $2.2 billion.

At the closing of the Merger, two members of the Celgene board of directors will be appointed to the BMS board of directors.

The foregoing description of the Merger Agreement is not complete and is qualified in its entirety by the full text of the Merger Agreement, a copy of which is attached hereto as Exhibit 2.1 and the terms of which are incorporated herein by reference.

Contingent Value Rights Agreement

Pursuant to the Merger Agreement, at or immediately prior to the closing of the Merger, BMS and a trustee will enter into a Contingent Value Rights Agreement (the "CVR Agreement") governing the terms of the CVRs. Each CVR will entitle its holder to receive $9.00 in cash if the U.S. Food and Drug Administration approves, by the dates noted below, Celgene, BMS or their respective affiliates to commercially manufacture, market and sell in United States all of the following three products for the indications noted below:

- by December 31, 2020, the product known as "JCAR017" for the treatment of relapsed-refractory diffuse large B cell lymphoma in humans;
- by December 31, 2020, the product known as "Ozanimod" for the treatment of relapsing multiple sclerosis in humans; and
- by March 31, 2021, the product known as "BB2121" for the treatment of relapsed/refractory multiple myeloma in humans.

BMS has agreed to use "Diligent Efforts" (as defined in the CVR Agreement) to achieve the foregoing milestones. In addition, BMS has agreed to use reasonable best efforts to maintain the listing of the CVRs on the New York Stock Exchange or other national securities exchange for so long as any CVRs remain outstanding.

The foregoing description of the CVR Agreement is not complete and is qualified in its entirety by reference to the CVR Agreement, which is filed as Exhibit 10.1 hereto and is incorporated herein by reference.

Important Statement regarding the Merger Agreement . The Merger Agreement has been included to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about Celgene, BMS, Merger Sub or their respective subsidiaries and affiliates. The Merger Agreement contains representations and warranties by BMS and Merger Sub, on the one hand, and by Celgene, on the other hand, made solely for the benefit of the other. The assertions embodied in those representations and warranties are qualified by information in confidential disclosure schedules delivered by each party in connection with the signing of the Merger Agreement. Moreover, certain representations and warranties in the Merger Agreement 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 stockholders, or may have been used for the purpose of allocating risk between BMS and Merger Sub, on the one hand, and Celgene, on the other hand. Accordingly, the representations and warranties in the Merger Agreement should not be relied on by any persons as characterizations of the actual state of facts about BMS or Celgene 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 Merger Agreement, which subsequent information may or may not be fully reflected in BMS's or Celgene's public disclosures. The Merger Agreement should not be read alone, but should instead be read in conjunction with the other information regarding the Merger Agreement, the Merger, BMS, Celgene, their respective affiliates and their respective businesses, that will be contained in, or incorporated by reference into, the Registration Statement on Form S-4 that will include a joint proxy statement of Celgene and BMS and a prospectus of BMS, as well as in the Forms 10-K, Forms 10-Q and other filings that each of BMS and Celgene make with the SEC.

Item 5.02 **Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers** .

Effective January 2, 2019, Celgene's Chief Executive Officer, Chief Financial Officer, President, Research & Early Development, and Chief Corporate Strategy Officer each became participants in the Celgene Corporation Executive Severance Plan (the "ESP"). Pursuant to the ESP, each such officer is entitled to receive severance benefits upon a termination of employment by the Company without cause or due to the officer's resignation for good reason (each, a "Qualifying Termination"), subject to execution of a release and termination agreement.

If the Qualifying Termination occurs on, or within two years following, a change in control of Celgene or, in certain circumstances, otherwise occurs in connection with a change in control of Celgene (each, a "CIC Termination"), the severance benefits are generally (1) a cash severance payment equal to 2.5x (or 3x, in the case of the Chief Executive Officer) multiplied by the sum of the officer's annual base salary and target annual cash incentive opportunity, (2) COBRA continuation coverage at active employee rates for a benefits continuation period of up to 30 months (or 36 months, in the case of the Chief Executive Officer), (3) 18 months of outplacement services, (4) a prorated annual incentive compensation award for the year of termination, and (5) full accelerated vesting of all outstanding equity awards granted under the Company's equity plan.

If the Qualifying Termination is not a CIC Termination, the severance benefits are generally (1) a cash severance payment equal to 1.5x (or 2x, in the case of the Chief Executive Officer) multiplied by the sum of the officer's annual base salary and target annual cash incentive opportunity, (2) COBRA continuation coverage at active employee rates for a benefits continuation period of up to 18 months (or 24 months, in the case of the Chief Executive Officer), and (3) 18 months of outplacement services.

The foregoing description of the ESP is not complete and is qualified in its entirety by the full text of the ESP, a copy of which is attached hereto as Exhibit 10.2 and the terms of which are incorporated herein by reference.

* * *

Important Information For Investors And Stockholders

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval. It does not constitute a prospectus or prospectus equivalent document. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended.

In connection with the proposed transaction between Bristol-Myers Squibb Company ("Bristol-Myers Squibb") and Celgene Corporation ("Celgene"), Bristol-Myers Squibb and Celgene will file relevant materials with the Securities and Exchange Commission (the "SEC"), including a Bristol-Myers Squibb registration statement on Form S-4 that will include a joint proxy statement of Bristol-Myers Squibb and Celgene that also constitutes a prospectus of Bristol-Myers Squibb, and a definitive joint proxy statement/prospectus will be mailed to stockholders of Bristol-Myers Squibb and Celgene. INVESTORS AND SECURITY HOLDERS OF BRISTOL-MYERS SQUIBB AND CELGENE ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS THAT WILL BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. Investors and security holders will be able to obtain free copies of the registration statement and the joint proxy statement/prospectus (when available) and other documents filed with the SEC by Bristol-Myers Squibb or Celgene through the website maintained by the SEC at http://www.sec.gov. Copies of the documents filed with the SEC by Bristol-Myers Squibb will be available free of charge on Bristol-Myers Squibb's internet website at http://www.bms.com under the tab, "Investors" and under the heading "Financial Reporting" and subheading "SEC Filings" or by contacting Bristol-Myers Squibb's Investor Relations Department through https://www.bms.com/investors/investor-contacts.html. Copies of the documents filed with the SEC by Celgene will be available free of charge on Celgene's internet website at http://www.celgene.com under the tab "Investors" and under the heading "Financial Information" and subheading "SEC Filings" or by contacting Celgene's Investor Relations Department at ir@celgene.com.

Certain Information Regarding Participants

Bristol-Myers Squibb, Celgene, and their respective directors and executive officers may be considered participants in the solicitation of proxies in connection with the proposed transaction. Information about the directors and executive officers of Bristol-Myers Squibb is set forth in its Annual Report on Form 10-K for the year ended December 31, 2017, which was filed with the SEC on February 13, 2018, its proxy statement for its 2018 annual meeting of stockholders, which was filed with the SEC on March 22, 2018, and its Current Report on Form 8-K, which was filed with the SEC on August 28, 2018. Information about the directors and executive officers of Celgene is set forth in its Annual Report on Form 10-K for the year ended December 31, 2017, which was filed with the SEC on February 7, 2018, its proxy statement for its 2018 annual meeting of stockholders, which was filed with the SEC on April 30, 2018, and its Current Reports on Form 8-K, which were filed with the SEC on June 1, 2018, June 19, 2018 and November 2, 2018. Other information regarding the participants in the proxy solicitations and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the joint proxy statement/prospectus and other relevant materials to be filed with the SEC regarding the proposed transaction when they become available. You may obtain these documents (when they become available) free of charge through the website maintained by the SEC at http://www.sec.gov and from Investor Relations at Bristol-Myers Squibb or Celgene as described above.

Cautionary Statement Regarding Forward-Looking Statements

This communication contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. You can generally identify forward-looking statements by the use of forward-looking terminology such as "anticipate," "believe," "continue," "could," "estimate," "expect," "explore," "evaluate," "intend," "may," "might," "plan," "potential," "predict," "project," "seek," "should," or "will," or the negative thereof or other variations thereon or comparable terminology. These forward-looking statements are only predictions and involve known and unknown risks and uncertainties, many of which are beyond Bristol-Myers Squibb's and Celgene's control.

Statements in this communication regarding Bristol-Myers Squibb, Celgene and the combined company that are forward-looking, including projections as to the anticipated benefits of the proposed transaction, the impact of the proposed transaction on Bristol-Myers Squibb's and Celgene's business and future financial and operating results, the amount and timing of synergies from the proposed transaction, the terms and scope of the expected financing for the proposed transaction, the aggregate amount of indebtedness of the combined company following the closing of the proposed transaction, expectations regarding cash flow generation, accretion to non-GAAP earnings per share, capital structure, debt repayment, adjusted leverage ratio and credit ratings following the closing of the proposed transaction, Bristol-Myers Squibb's ability and intent to conduct a share repurchase program and declare future dividend payments, the combined company's pipeline, intellectual property protection and R&D spend, the timing and probability of a payment pursuant to the contingent value right consideration, and the closing date for the proposed transaction, are based on management's estimates, assumptions and projections, and are subject to significant uncertainties and other factors, many of which are beyond Bristol-Myers Squibb's and Celgene's control. These factors include, among other things, effects of the continuing implementation of governmental laws and regulations related to Medicare, Medicaid, Medicaid managed care organizations and entities under the Public Health Service 340B program, pharmaceutical rebates and reimbursement, market factors, competitive product development and approvals, pricing controls and pressures (including changes in rules and practices of managed care groups and institutional and governmental purchasers), economic conditions such as interest rate and currency exchange rate fluctuations, judicial decisions, claims and concerns that may arise regarding the safety and efficacy of in-line products and product candidates, changes to wholesaler inventory levels, variability in data provided by third parties, changes in, and interpretation of, governmental regulations and legislation affecting domestic or foreign operations, including tax obligations, changes to business or tax planning strategies, difficulties and delays in product development, manufacturing or sales including any potential future recalls, patent positions and the ultimate outcome of any litigation matter. These factors also include the combined company's ability to execute successfully its strategic plans, including its business development strategy, the expiration of patents or data protection on certain products, including assumptions about the combined company's ability to retain patent exclusivity of certain products, the impact and result of governmental investigations, the combined company's ability to obtain necessary regulatory approvals or obtaining these without delay, the risk that the combined company's products prove to be commercially successful or that contractual milestones will be achieved. Similarly, there are uncertainties relating to a number of other important factors, including: results of clinical trials and preclinical studies, including subsequent analysis of existing data and new data received from ongoing and future studies; the content and timing of decisions made by the U.S. FDA and other regulatory authorities, investigational review boards at clinical trial sites and publication review bodies; the ability to enroll patients in planned clinical trials; unplanned cash requirements and expenditures; competitive factors; the ability to obtain, maintain and enforce patent and other intellectual property protection for any product candidates; the ability to maintain key collaborations; and general economic and market conditions. Additional information concerning these risks, uncertainties and assumptions can be found in Bristol-Myers Squibb's and Celgene's respective filings with the SEC, including the risk factors discussed in Bristol-Myers Squibb's and Celgene's most recent Annual Reports on Form 10-K, as updated by their Quarterly Reports on Form 10-Q and future filings with the SEC.

It should also be noted that projected financial information for the combined businesses of Bristol-Myers Squibb and Celgene is based on management's estimates, assumptions and projections and has not been prepared in conformance with the applicable accounting requirements of Regulation S-X relating to pro forma financial information, and the required pro forma adjustments have not been applied and are not reflected therein. None of this information should be considered in isolation from, or as a substitute for, the historical financial statements of Bristol-Myers Squibb or Celgene. Important risk factors could cause actual future results and other future events to differ materially from those currently estimated by management, including, but not limited to, the risks that: a condition to the closing of the proposed acquisition may not be satisfied; a regulatory approval that may be required for the proposed acquisition is delayed, is not obtained or is obtained subject to conditions that are not anticipated; Bristol-Myers Squibb is unable to achieve the synergies and value creation contemplated by the proposed acquisition; Bristol-Myers Squibb is unable to promptly and effectively integrate Celgene's businesses; management's time and attention is diverted on transaction related issues; disruption from the transaction makes it more difficult to maintain business, contractual and operational relationships; the credit ratings of the combined company declines following the proposed acquisition; legal proceedings are instituted against Bristol-Myers Squibb, Celgene or the combined company; Bristol-Myers Squibb, Celgene or the combined company is unable to retain key personnel; and the announcement or the consummation of the proposed acquisition has a negative effect on the market price of the capital stock of Bristol-Myers Squibb and Celgene or on Bristol-Myers Squibb's and Celgene's operating results.

No assurances can be given that any of the events anticipated by the forward-looking statements will transpire or occur, or if any of them do occur, what impact they will have on the results of operations, financial condition or cash flows of Bristol-Myers Squibb or Celgene. Should any risks and uncertainties develop into actual events, these developments could have a material adverse effect on the proposed transaction and/or Bristol-Myers Squibb or Celgene, Bristol-Myers Squibb's ability to successfully complete the proposed transaction and/or realize the expected benefits from the proposed transaction. You are cautioned not to rely on Bristol-Myers Squibb's and Celgene's forward-looking statements. These forward-looking statements are and will be based upon management's then-current views and assumptions regarding future events and operating performance, and are applicable only as of the dates of such statements. Neither Bristol-Myers Squibb nor Celgene assumes any duty to update or revise forward-looking statements, whether as a result of new information, future events or otherwise, as of any future date.

Item 9.01 **Financial Statements and Exhibits** .

(d) Exhibits

Exhibit No.	Description of Exhibit
2.1	Agreement and Plan of Merger by and among Bristol-Myers Squibb Company, Burgundy Merger Sub, Inc. and Celgene Corporation, dated as of January 2, 2019. †
10.1	Form of Contingent Value Rights Agreement by and between Bristol-Myers Squibb Company and [Trustee].
10.2	Celgene Corporation Executive Severance Plan.

† Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Celgene hereby undertakes to furnish supplemental copies of any of the omitted schedules upon request by the U.S. Securities and Exchange Commission; provided, however, that Celgene may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedules so furnished.

SIGNATURES

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

Date: January 4, 2019

CELGENE CORPORATION

By: /s/ David V. Elkins
Name: David V. Elkins
Title: Executive Vice President and Chief Financial Officer

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

dated as of

January 2, 2019

among

BRISTOL-MYERS SQUIBB COMPANY,

BURGUNDY MERGER SUB, INC.

and

CELGENE CORPORATION

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EXHIBITS

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this " Agreement "), dated as of January 2, 2019 is by and among Bristol-Myers Squibb Company, a Delaware corporation (" Parent "), Burgundy Merger Sub, Inc., a Delaware corporation and a direct, wholly owned Subsidiary of Parent (" Merger Sub "), and Celgene Corporation, a Delaware corporation (the " Company ").

WHEREAS, the Board of Directors of the Company has unanimously (i) determined that this Agreement and the transactions contemplated hereby (including the Merger) are fair to and in the best interests of the Company and its stockholders, (ii) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby (including the Merger), (iii) directed that the adoption of this Agreement be submitted to a vote at a meeting of the Company's stockholders, and (iv) recommended the adoption of this Agreement by the Company's stockholders;

WHEREAS, the Board of Directors of Parent has (i) determined that this Agreement and the transactions contemplated hereby (including the Parent Share Issuance) are fair to and in the best interests of Parent and its stockholders, (ii) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby (including the Parent Share Issuance), (iii) directed that the Parent Share Issuance be submitted to a vote at a meeting of Parent's stockholders, and (iv) recommended the approval of the Parent Share Issuance by Parent's stockholders;

WHEREAS, the Board of Directors of Merger Sub has unanimously (i) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby (including the Merger), and (ii) directed that this Agreement be submitted to Parent for its approval and adoption in its capacity as the sole stockholder of Merger Sub;

WHEREAS, at or immediately prior to the Merger Effective Time, Parent and a trustee selected by Parent and reasonably acceptable to the Company (the " New CVR Trustee ") will enter into a Contingent Value Rights Agreement (the " New CVR Agreement "), in substantially the form attached hereto as Exhibit A (subject to modification contemplated by Section 7.07); and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements specified in this Agreement in connection with the transactions contemplated hereby (including the Merger) and to prescribe certain conditions to the transactions contemplated hereby (including the Merger).

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions .

(a) As used in this Agreement, the following terms have the following meanings:

" 1933 Act " means the U.S. Securities Act of 1933, as amended.

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

" Abraxis CVR " means a CVR, as defined in the Abraxis CVR Agreement (as in effect as of the date hereof).

" Abraxis CVR Agreement " means that certain Contingent Value Rights Agreement, dated as of October 15, 2010, by and between the Company and American Stock Transfer & Trust Company, LLC (the " Abraxis CVR Trustee ").

" Affiliate " means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person. The term "control" means the possession, directly or indirectly, 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, and the terms "controlled" and "controlling" have meanings correlative thereto.

" Antitrust Laws " shall mean the Sherman Act of 1890, the Clayton Act of 1914, the Federal Trade Commission Act of 1914, the HSR Act and all other federal, state and foreign Applicable Laws in effect from time to time that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, lessening of competition or restraint of trade.

" Applicable Law(s) " means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, executive order, Order or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as the same may be amended from time to time unless expressly specified otherwise in this Agreement. References to "Applicable Law" or "Applicable Laws" shall be deemed to include the FDCA, the rules, regulations and administrative policies of the FDA, the PHSA, the EMA, the Bribery Legislation, the Sanction Laws and the Antitrust Laws.

" Bribery Legislation " means all Applicable Laws relating to the prevention of bribery, corruption and money laundering, including the United States Foreign Corrupt Practices Act of 1977, the Organization For Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related implementing legislation, the UK Bribery Act 2010 and the Proceeds of Crime Act 2002.

“ Business Day ” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“ Code ” means the U.S. Internal Revenue Code of 1986, as amended.

“ Company Acquisition Proposal ” means any indication of interest, proposal or offer from any Person or Group, other than Parent and its Subsidiaries, relating to any (i) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of the Company or any of its Subsidiaries (including securities of Subsidiaries) equal to twenty percent (20%) or more of the consolidated assets of the Company, or to which twenty percent (20%) or more of the revenues or earnings of the Company on a consolidated basis are attributable for the most recent fiscal year in which audited financial statements are then available, (ii) direct or indirect acquisition or issuance (whether in a single transaction or a series of related transactions) of twenty percent (20%) or more of any class of equity or voting securities of the Company, (iii) tender offer or exchange offer that, if consummated, would result in such Person or Group beneficially owning twenty percent (20%) or more of any class of equity or voting securities of the Company, or (iv) merger, consolidation, share exchange, business combination, joint venture, reorganization, recapitalization, liquidation, dissolution or similar transaction or series of related transactions involving the Company or any of its Subsidiaries, under which such Person or Group or, in the case of clause (B), the stockholders or equityholders of any such Person or Group would, directly or indirectly, (A) acquire assets equal to twenty percent (20%) or more of the consolidated assets of the Company, or to which twenty percent (20%) or more of the revenues or earnings of the Company on a consolidated basis are attributable for the most recent fiscal year in which audited financial statements are then available, or (B) immediately after giving effect to such transaction(s), beneficially own twenty percent (20%) or more of any class of equity or voting securities of the Company or the surviving or resulting entity in such transaction(s).

“ Company Balance Sheet ” means the unaudited consolidated balance sheet of the Company and its Subsidiaries as of September 30, 2018, and the footnotes to such consolidated balance sheet, in each case set forth in the Company’s report on Form 10-Q for the fiscal quarter ended September 30, 2018.

“ Company Balance Sheet Date ” means September 30, 2018.

“ Company Common Stock ” means the common stock, par value $0.01 per share, of the Company.

“ Company Disclosure Schedule ” means the Company Disclosure Schedule delivered to Parent on the date of this Agreement.

" Company Employee Plan " means any (i) "employee benefit plan" as defined in Section 3(3) of ERISA, (ii) compensation, employment, consulting, severance, termination protection, change in control, transaction bonus, retention or similar plan, agreement, arrangement, program or policy or (iii) other plan, agreement, arrangement, program or policy providing for compensation, bonuses, profit-sharing, equity or equity-based compensation or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangement), medical, dental, vision, prescription or fringe benefits, life insurance, relocation or expatriate benefits, perquisites, disability or sick leave benefits, employee assistance program, workers' compensation, supplemental unemployment benefits or post-employment or retirement benefits (including compensation, pension, health, medical or insurance benefits), in each case whether or not written (A) that is sponsored, maintained, administered, contributed to or entered into by the Company or any of its Subsidiaries for the current or future benefit of any director, officer, or employee (including any former director, officer, or employee) of the Company or any of its Subsidiaries or (B) for which the Company or any of its Subsidiaries has any direct or indirect liability and, in each case, other than any benefit or compensation plan, program or other arrangement maintained by a Governmental Authority.

" Company Equity Awards " means the Company Stock Options, the Company RSU Awards, the Company PSU Awards, and the Company RSAs.

" Company Intellectual Property " means the Owned Intellectual Property and the Licensed Intellectual Property, in each case, of the Company and its Subsidiaries.

" Company Material Adverse Effect " means any event, change, effect, development or occurrence that, individually or together with any other event, change, effect, development or occurrence, has had or would reasonably be expected to have a material adverse effect on the financial condition, business or results of operations of the Company and its Subsidiaries, taken as a whole; provided that no event, change, effect, development or occurrence to the extent resulting from, arising out of, or relating to any of the following shall be deemed to constitute a Company Material Adverse Effect or shall be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect: (i) any changes in general United States or global economic conditions, (ii) any changes in conditions generally affecting the industries in which the Company or any of its Subsidiaries operates, (iii) any decline, in and of itself, in the market price or trading volume of the Company Common Stock (it being understood and agreed that the foregoing shall not preclude Parent from asserting that any facts, events, developments or occurrences giving rise to or contributing to such decline that are not otherwise excluded from the definition of Company Material Adverse Effect should be deemed to constitute a Company Material Adverse Effect or should be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), (iv) any changes in regulatory, legislative or political conditions or in securities, credit, financial, debt or other capital markets, in each case in the United States or any foreign jurisdiction, (v) any failure, in and of itself, by the Company or any of its Subsidiaries to meet any internal or published projections, forecasts, estimates or predictions, revenues, earnings or other financial or operating metrics for any period (it being understood and agreed that the foregoing shall not preclude Parent from asserting that any facts, events, developments or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Company Material Adverse Effect should be deemed to constitute a Company Material Adverse Effect or should be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), (vi) the execution and delivery of this Agreement, the public announcement or the pendency of this Agreement or the pendency or consummation of the transactions contemplated by this Agreement (including the Merger), the taking of any action required or expressly contemplated by this Agreement or the identity of, or any facts or circumstances relating to Parent or any of its Subsidiaries, including the impact of any of the foregoing on the relationships, contractual or otherwise, of the Company or any of its Subsidiaries with Governmental Authorities, customers, suppliers, partners, officers, employees or other material business relations (it being understood and agreed that the foregoing shall not apply with respect to any representation or warranty that is expressly intended to address the consequences of the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby (including Section 4.04(c)) or with respect to the condition to Closing contained in Section 9.02(b) , to the extent it relates to such representations and warranties), (vii) any adoption, implementation, promulgation, repeal, modification, amendment, authoritative interpretation, change or proposal of any Applicable Law of or by any Governmental Authority, (viii) any changes or prospective changes in GAAP (or authoritative interpretations thereof), (ix) any changes in geopolitical conditions, the outbreak or escalation of hostilities, any acts of war, sabotage, cyberattack or terrorism, or any escalation or worsening of any such acts of war, sabotage, cyberattack or terrorism threatened or underway as of the date of this Agreement, (x) the taking of any action at the written request of or with the written consent of Parent, (xi) any reduction in the credit rating of the Company or any of its Subsidiaries (it being understood and agreed that the foregoing shall not preclude Parent from asserting that any facts, events, developments or occurrences giving rise to or contributing to such reduction that are not otherwise excluded from the definition of Company Material Adverse Effect should be deemed to constitute a Company Material Adverse Effect or should be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), (xii) any epidemic, plague, pandemic or other outbreak of illness or public health event, hurricane, earthquake, flood or other natural disasters, acts of God or any change resulting from weather conditions, (xiii) any claims, actions, suits or proceedings arising from allegations of a breach of fiduciary duty or violation of Applicable Law relating to this Agreement or the transactions contemplated hereby (including the Merger), or (xiv) any regulatory or clinical changes, effects, developments or occurrences relating to any Company Pipeline Product (including (A) any suspension, rejection, refusal of, request to refile or any delay in obtaining or making any regulatory application or filing relating to any Company Pipeline Product, (B) any negative regulatory actions, requests, recommendations or decisions of any Governmental Authority relating to any Company Pipeline Product or any other regulatory or clinical development relating to any Company Pipeline Product, (C) any clinical studies, tests or results or announcements thereof with respect to any Company Pipeline Product, and (D) any delay, hold or termination of any clinical trial or any delay, hold or termination of any planned application for marketing approval with respect to any Company Pipeline Product) except in the case of each of clauses (i), (ii), (iv), (vii), (viii), (ix) or (xii), to the extent that any such event, change, effect, development or occurrence has a disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, relative to the adverse effect such event, change, effect, development or occurrence has on other companies operating in the industries in which the Company and its Subsidiaries operate.

" Company Permitted Settlement " means, subject to the CPS Company Disclosure (as defined in Section 6.01 of the Company Disclosure Schedule), any settlement or compromise of, or any agreement to avoid, any claim, action or proceeding or threatened claim, action or proceeding (or series of related, claims actions or proceedings), where such settlement, compromise or agreement (i) does not involve payments (contingent or otherwise) by the Company or any of its Subsidiaries in excess of $100,000,000 in the aggregate with all other such settlements, compromises or agreements that relate to the applicable claim, action or proceeding (but, with respect to Intellectual Property, that relate to the applicable Company Product), (ii) would not, at the time such settlement, compromise or agreement is executed, be expected to violate any Applicable Laws as reasonably determined by the Company in good faith, or (iii) does not impose any materially burdensome monitoring or reporting obligations to any other Person outside of the ordinary course of business or any material restrictions, liabilities or obligations (unless such restrictions, liabilities and obligations are ordinary course terms typically included in the settlement or compromise of the applicable type of claim, action or proceeding (e.g., the inclusion of licenses and covenants-not-to-sue in the settlement of a claim of Intellectual Property infringement)) on the Company or any of its Subsidiaries (or, following the Closing, on Parent or any of its Subsidiaries).

" Company Pipeline Product " means any Company Product that, as of the date of this Agreement, is not being sold or distributed by or on behalf of the Company or any of its Subsidiaries.

" Company Product " means each product or product candidate that is being researched, tested, developed, commercialized, manufactured, sold or distributed by or on behalf of the Company or any of its Subsidiaries.

" Company Registered IP " means all Scheduled Covered Product IP and all other issued patents and other registrations (including patents, trademarks and copyrights, and domain name registrations) and patent applications and other applications for registration for Owned Intellectual Property included in the Company Intellectual Property.

" Company Stock Plans " means the 2017 Stock Incentive Plan, the 2008 Stock Incentive Plan, the 1995 Non Employee Directors' Incentive Plan and the 1992 Long-Term Incentive Plan, in each case as amended from time to time, and any other plan or arrangement of the Company or any of its Subsidiaries providing for the grant of compensatory equity-based awards.

" Company Stock Price " means the average of the volume weighted averages of the trading price of Company Common Stock on Nasdaq (as reported by Bloomberg L.P. or, if not reported thereby, by another authoritative source mutually selected by Parent and the Company in good faith) on each of the three (3) consecutive trading days ending on the last trading day prior to the Closing.

" Consent " means any consent, approval, waiver, license, permit, variance, exemption, franchise, clearance, authorization, acknowledgment, Order or other confirmation.

" Contract " means any legally binding contract, agreement, obligation, understanding or instrument, lease, license or other legally binding commitment or undertaking of any nature.

" Covered Product " means each of the Company Products listed on Section 1.01(a)(1) of the Company Disclosure Schedule.

" Covered Rights " means, with respect to a Company Product, the right to research, develop, manufacture, have manufactured, supply, test, distribute, market, promote, license, offer for sale, sell, import, export, commercialize or otherwise exploit such Company Product in any jurisdiction.

" Credit Agreement " means that certain Amended and Restated Credit Agreement, dated as of April 25, 2018, by and among the Company, the Lenders party thereto and Citibank, N.A. as Administrative Agent.

" Environmental Law " means any Applicable Law relating to (i) the protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances.

" Environmental Permits " means all permits, licenses, franchises, consents (including consents required by Contract), variances, exemptions, orders, certificates, approvals and other similar authorizations of Governmental Authorities required by Environmental Law and affecting, or relating to, the business of the Company or any of its Subsidiaries, or the business of Parent or any of its Subsidiaries, as applicable.

" Equity Award Exchange Ratio " means the sum, rounded to the nearest one hundredth, equal to (i) the Exchange Ratio, plus (ii) the quotient of (A) the Cash Consideration, divided by (B) the Parent Stock Price.

" Equity Securities " means, with respect to any Person, (i) any shares of capital stock or other voting securities of, or other ownership interest in, such Person, (ii) any securities of such Person convertible into or exchangeable for shares of capital stock or other voting securities of, or other ownership interests in, such Person or any of its Subsidiaries, (iii) any warrants, calls, options or other rights to acquire from such Person, or other obligations of such Person to issue, any capital stock or other voting securities of, or other ownership interests in, or securities convertible into or exchangeable for capital stock or other voting securities of, or other ownership interests in, such Person or any of its Subsidiaries, or (iv) any restricted shares, stock appreciation rights, performance units, contingent value rights, "phantom" stock or similar securities or rights issued by or with the approval of such Person that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of (A) any capital stock or other voting securities of, (B) other ownership interests in, or (C) any business, products or assets of, such Person or any of its Subsidiaries.

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

" ERISA Affiliate " means, with respect to any entity, any other entity that, together with such entity, would be treated as a single employer under Section 414 of the Code.

" FCPA " means the Foreign Corrupt Practices Act of 1977.

" Filing " means any registration, petition, statement, application, schedule, form, declaration, notice, notification, report, submission or other filing.

" Financing Sources " means the Persons that have entered or will enter into commitment letters, credit agreements or other agreements with Parent in connection with the Debt Financing (including any Persons providing Alternative Financing and including, for purposes of Section 6.03 , any Persons providing any alternate permanent financing referred to in the Debt Commitment Letter) and any joinder agreements, indentures or credit agreements entered into pursuant thereto, including the agents, arrangers, lenders and other entities that have committed to provide or arrange all or part of the Debt Financing, and their respective general or limited partners, direct or indirect shareholders, managers, members, Affiliates, Representatives, successors and assigns; provided that neither Parent nor any Affiliate of Parent shall be a Financing Source.

" GAAP " means United States generally accepted accounting principles.

" Governmental Authority " means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency, commission or official, including any political subdivision thereof, or any non-governmental self-regulatory agency, commission or authority and any arbitral tribunal.

" Government Official " means (i) any official, officer, employee or representative of, or any Person acting in an official capacity for or on behalf of, any Governmental Authority, (ii) any candidate for political office or (iii) any political party or party official.

" Group " means a "group" as defined in Section 13(d) of the 1934 Act.

" Hatch-Waxman Act " means the Drug Price Competition and Patent Term Restoration Act of 1984.

" Hazardous Substance " means any substance, material or waste that is listed, defined, designated or classified as hazardous, toxic, radioactive, dangerous or a "pollutant" or "contaminant" or words of similar meaning under any Environmental Law or that is otherwise regulated by any Governmental Authority with jurisdiction over the environment or natural resources, including petroleum or any derivative or byproduct thereof, radon, radioactive material, asbestos or asbestos-containing material, urea formaldehyde, foam insulation or polychlorinated biphenyls.

" HSR Act " means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

" Indentures " means, collectively:

(i) that certain indenture, dated as of October 7, 2010, relating to the Company's 3.950% Senior Notes due 2020 and 5.700% Senior Notes due 2040;

(ii) that certain indenture, dated as of August 9, 2012, relating to the Company's 3.250% Senior Notes due 2022;

(iii) that certain indenture dated as of August 6, 2013, relating to the Company's 4.000% Senior Notes due 2023 and 5.250% Senior Notes due 2043;

(iv) that certain indenture, dated as of May 15, 2014, relating to the Company's 2.250% Senior Notes due 2019, 3.625% Senior Notes due 2024 and 4.625% Senior Notes due 2044;

(v) that certain indenture, dated as of August 12, 2015, relating to the Company's 2.875% Senior Notes due 2020, 3.550% Senior Notes due 2022, 3.875% Senior Notes due 2025 and 5.000% Senior Notes due 2045;

(vi) that certain indenture, dated November 9, 2017, relating to the Company's 2.750% Senior Notes due 2023, 3.450% Senior Notes due 2027 and 4.350% Senior Notes due 2047;

(vii) that certain indenture, dated as of February 2018, relating to the Company's 2.875% Senior Notes due 2021, 3.250% Senior Notes due 2023, 3.900% Senior Notes due 2028 and 4.550% Senior Notes due 2048; and

(viii) that certain indenture, dated as of August 10, 2017, relating to the Company's 2.250% Senior Notes due 2021.

" Intellectual Property " means any and all of the following, whether or not registered, and all rights therein and associated therewith, arising in the United States or any other jurisdiction throughout the world: (i) trademarks, service marks, trade names, trade dress, logos, slogans, Internet domain names, Internet account names (including social networking and media names) and other indicia of origin, together with all goodwill associated therewith or symbolized thereby, and all registrations and applications relating to the foregoing; (ii) patents and pending patent applications, and all divisions, continuations, continuations-in-part, reissues and reexaminations, and any extensions and counterparts thereof; (iii) works of authorship (whether or not copyrightable), registered and unregistered copyrights (including those in Software), all registrations and applications to register the same, and all renewals, extensions, reversions and restorations thereof, including moral rights of authors, and database rights; (iv) trade secrets, rights in technology, confidential or proprietary information and other know-how, including inventions (whether or not patentable or reduced to practice), concepts, methods, processes, protocols, assays, formulations, formulae, technical, research, clinical and other data, databases, designs, specifications, schematics, drawings, algorithms, models and methodologies; (v) rights in Software; and (vi) other similar types of proprietary rights or other intellectual property.

" In-the-Money Option " means each Company Stock Option that is not an Out-of-the-Money Option.

" IT Assets " means any and all computers, Software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines and other information technology equipment, and all associated documentation, owned by, or licensed or leased to, the Company or any of its Subsidiaries, or Parent or any of its Subsidiaries, as applicable.

" Key Covered Product " means each Company Product listed on Section 1.01(a)(3) of the Company Disclosure Schedule.

" knowledge " means (i) with respect to the Company, the actual knowledge of those executive officers of the Company set forth in Section 1.01(b) of the Company Disclosure Schedule and (ii) with respect to Parent, the actual knowledge of those executive officers of Parent set forth in Section 1.01 of the Parent Disclosure Schedule. None of the individuals set forth in Section 1.01(b) of the Company Disclosure Schedule or Section 1.01 of the Parent Disclosure Schedule shall have any personal liability or obligations regarding such knowledge.

" Licensed Intellectual Property " means any and all Intellectual Property owned by a Third Party and licensed (including sublicensed) to the Company or any of its Subsidiaries, or Parent or any of its Subsidiaries, as applicable.

" Lien " means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such property or asset (excluding in each case any license to, or covenant not to sue in respect of, Intellectual Property).

" Major Subsidiary " means, with respect to any Person, each Subsidiary of such Person that is a "significant subsidiary" (as defined in Regulation S-X) of such Person.

" NYSE " means the New York Stock Exchange.

" Order " means any order, writ, decree, judgment, award, injunction, ruling, settlement or stipulation issued, promulgated, made, rendered or entered into by or with any Governmental Authority or arbitrator (in each case, whether temporary, preliminary or permanent).

" Out-of-the-Money Option " means each Company Stock Option for which the per share exercise price as of immediately prior to the Effective Time is equal to, or exceeds, the Company Stock Price.

" Out-of-the-Money Option Exchange Ratio " means the quotient, rounded to the nearest one hundredth, of (i) the Company Stock Price, divided by (ii) the Parent Stock Price.

" Owned Intellectual Property " means, with respect to any Person, any and all Intellectual Property owned or purported to be owned by such Person or any of its Subsidiaries.

“ Parent Acquisition Proposal ” means any indication of interest, proposal or offer from any Person or Group, other than the Company and its Subsidiaries, relating to any (i) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of Parent or any of its Subsidiaries (including securities of Subsidiaries) equal to twenty percent (20%) or more of the consolidated assets of Parent, or to which twenty percent (20%) or more of the revenues or earnings of Parent on a consolidated basis are attributable for the most recent fiscal year in which audited financial statements are then available, (ii) direct or indirect acquisition or issuance (whether in a single transaction or a series of related transactions) of twenty percent (20%) or more of any class of equity or voting securities of Parent, (iii) tender offer or exchange offer that, if consummated, would result in such Person or Group beneficially owning twenty percent (20%) or more of any class of equity or voting securities of Parent, or (iv) merger, consolidation, share exchange, business combination, joint venture, reorganization, recapitalization, liquidation, dissolution or similar transaction or series of related transactions involving Parent or any of its Subsidiaries, under which such Person or Group or, in the case of clause (B), the stockholders or equityholders of any such Person or Group would, directly or indirectly, (A) acquire assets equal to twenty percent (20%) or more of the consolidated assets of Parent, or to which twenty percent (20%) or more of the revenues or earnings of Parent on a consolidated basis are attributable for the most recent fiscal year in which audited financial statements are then available, or (B) immediately after giving effect to such transaction(s), beneficially own twenty percent (20%) or more of any class of equity or voting securities of Parent or the surviving or resulting entity in such transaction(s).

“ Parent Balance Sheet ” means the unaudited consolidated balance sheet of Parent and its Subsidiaries as of September 30, 2018, and the footnotes to such consolidated balance sheet, in each case set forth in Parent’s report on Form 10-Q for the fiscal quarter ended September 30, 2018.

“ Parent Balance Sheet Date ” means September 30, 2018.

“ Parent Common Stock ” means the common stock, par value $0.10 per share, of Parent.

“ Parent Disclosure Schedule ” means the Parent Disclosure Schedule delivered to the Company on the date of this Agreement.

“ Parent Employee Plan ” means any (i) “employee benefit plan” as defined in Section 3(3) of ERISA, (ii) compensation, employment, consulting, severance, termination protection, change in control, transaction bonus, retention or similar plan, agreement, arrangement, program or policy or (iii) other plan, agreement, arrangement, program or policy providing for compensation, bonuses, profit-sharing, equity or equity-based compensation or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangement), medical, dental, vision, prescription or fringe benefits, life insurance, relocation or expatriate benefits, perquisites, disability or sick leave benefits, employee assistance program, workers’ compensation, supplemental unemployment benefits or post-employment or retirement benefits (including compensation, pension, health, medical or insurance benefits), in each case whether or not written (A) that is sponsored, maintained, administered, contributed to or entered into by Parent or any of its Subsidiaries for the current or future benefit of any director, officer, or employee (including any former director, officer, or employee) of Parent or any of its Subsidiaries or (B) for which Parent or any of its Subsidiaries has any direct or indirect liability and, in each case, other than any benefit or compensation plan, program or other arrangement maintained by a Governmental Authority.

“ Parent Intellectual Property ” means the Owned Intellectual Property and the Licensed Intellectual Property, in each case, of Parent and its Subsidiaries.

" Parent Material Adverse Effect " means any event, change, effect, development or occurrence that, individually or together with any other event, change, effect, development or occurrence, has had or would reasonably be expected to have a material adverse effect on the financial condition, business or results of operations of Parent and its Subsidiaries, taken as a whole; provided that no event, change, effect, development or occurrence to the extent resulting from, arising out of, or relating to any of the following shall be deemed to constitute a Parent Material Adverse Effect or shall be taken into account in determining whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect: (i) any changes in general United States or global economic conditions, (ii) any changes in conditions generally affecting the industries in which Parent or any of its Subsidiaries operates, (iii) any decline, in and of itself, in the market price or trading volume of Parent Common Stock (it being understood and agreed that the foregoing shall not preclude the Company from asserting that any facts, events, developments or occurrences giving rise to or contributing to such decline that are not otherwise excluded from the definition of Parent Material Adverse Effect should be deemed to constitute a Parent Material Adverse Effect or should be taken into account in determining whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect), (iv) any changes in regulatory, legislative or political conditions or in securities, credit, financial, debt or other capital markets, in each case in the United States or any foreign jurisdiction, (v) any failure, in and of itself, by Parent or any of its Subsidiaries to meet any internal or published projections, forecasts, estimates or predictions, revenues, earnings or other financial or operating metrics for any period (it being understood and agreed that the foregoing shall not preclude the Company from asserting that any facts, events, developments or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Parent Material Adverse Effect should be deemed to constitute a Parent Material Adverse Effect or should be taken into account in determining whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect), (vi) the execution and delivery of this Agreement, the public announcement or the pendency of this Agreement or the pendency or consummation of the transactions contemplated by this Agreement (including the Merger), the taking of any action required or expressly contemplated by this Agreement or the identity of, or any facts or circumstances relating to the Company or any of its Subsidiaries, including the impact of any of the foregoing on the relationships, contractual or otherwise, of Parent or any of its Subsidiaries with Governmental Authorities, customers, suppliers, partners, officers, employees or other material business relations (it being understood and agreed that the foregoing shall not apply with respect to any representation or warranty that is expressly intended to address the consequences of the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby (including Section 5.04 (c)) or with respect to the condition to Closing contained in Section 9.03(b) , to the extent it relates to such representations and warranties), (vii) any adoption, implementation, promulgation, repeal, modification, amendment, authoritative interpretation, change or proposal of any Applicable Law of or by any Governmental Authority, (viii) any changes or prospective changes in GAAP (or authoritative interpretations thereof), (ix) any changes in geopolitical conditions, the outbreak or escalation of hostilities, any acts of war, sabotage, cyberattack or terrorism, or any escalation or worsening of any such acts of war, sabotage, cyberattack or terrorism threatened or underway as of the date of this Agreement, (x) the taking of any action at the written request of or with the written consent of the Company, (xi) any reduction in the credit rating of Parent or any of its Subsidiaries (it being understood and agreed that the foregoing shall not preclude the Company from asserting that any facts, events, developments or occurrences giving rise to or contributing to such reduction that are not otherwise excluded from the definition of Parent Material Adverse Effect should be deemed to constitute a Parent Material Adverse Effect or should be taken into account in determining whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect), (xii) any epidemic, plague, pandemic or other outbreak of illness or public health event, hurricane, earthquake, flood or other natural disasters, acts of God or any change resulting from weather conditions, (xiii) any claims, actions, suits or proceedings arising from allegations of a breach of fiduciary duty or violation of Applicable Law relating to this Agreement or the transactions contemplated hereby (including the Merger), or (xiv) any regulatory or clinical changes, effects, developments or occurrences relating to any Parent Pipeline Product (including (A) any suspension, rejection, refusal of, request to refile or any delay in obtaining or making any regulatory application or filing relating to any Parent Pipeline Product, (B) any negative regulatory actions, requests, recommendations or decisions of any Governmental Authority relating to any Parent Pipeline Product or any other regulatory or clinical development relating to any Parent Pipeline Product, (C) any clinical studies, tests or results or announcements thereof with respect to any Parent Pipeline Product, and (D) any delay, hold or termination of any clinical trial or any delay, hold or termination of any planned application for marketing approval with respect to any Parent Pipeline Product), except in the case of each of clauses (i), (ii), (iv), (vii), (viii), (ix) or (xii), to the extent that any such event, change, effect, development or occurrence has a disproportionate adverse effect on Parent and its Subsidiaries, taken as a whole, relative to the adverse effect such event, change, effect, development or occurrence has on other companies operating in the industries in which Parent and its Subsidiaries operate.

" Parent Pipeline Product " means any Parent Product that, as of the date of this Agreement, is not being sold or distributed by or on behalf of Parent or any of its Subsidiaries.

" Parent Product " means each product or product candidate that is being researched, tested, developed, commercialized, manufactured, sold or distributed by or on behalf of Parent or any of its Subsidiaries.

" Parent Stock Price " means the average of the volume weighted averages of the trading price of Parent Common Stock on the NYSE (as reported by Bloomberg L.P. or, if not reported therein, in another authoritative source mutually selected by Parent and the Company in good faith) on each of the five (5) consecutive trading days ending on the trading day that is two (2) trading days prior to the Closing Date.

" PBGC " means the Pension Benefit Guaranty Corporation.

" Permitted Lien " means (i) any Liens for utilities or Taxes not yet due and payable or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been established in accordance with GAAP, (ii) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar Liens, (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation, (iv) gaps in the chain of title evident from the records of the applicable Governmental Authority maintaining such records, easements, rights-of-way, covenants, restrictions and other encumbrances of record as of the date of this Agreement, (v) easements, rights-of-way, covenants, restrictions and other encumbrances incurred in the ordinary course of business that do not materially detract from the value or the use of the property subject thereto, (vi) statutory landlords' liens and liens granted to landlords under any lease, (vii) any purchase money security interests, equipment leases or similar financing arrangements, (viii) any Liens which are disclosed on the Company Balance Sheet (in the case of Liens applicable to the Company or any of its Subsidiaries) or the Parent Balance Sheet (in the case of Liens applicable to Parent or any of its Subsidiaries), or the notes thereto, or (ix) any Liens that are not material to the Company and its Subsidiaries or Parent and its Subsidiaries, as applicable, taken as a whole.

“ Person ” means any individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality of such government or political subdivision.

“ Representatives ” means, with respect to any Person, its officers, directors, employees, investment bankers, attorneys, accountants, consultants and other agents, advisors and representatives.

“ Sanctioned Country ” means any of Crimea, Cuba, Iran, North Korea, Sudan, and Syria.

“ Sanctioned Person ” means any Person with whom dealings are restricted or prohibited under any Sanctions Laws, including the Sanctions Laws of the United States, the United Kingdom, the European Union or the United Nations, including (i) any Person identified in any list of Sanctioned Persons maintained by (A) the United States Department of Treasury, Office of Foreign Assets Control, the United States Department of Commerce, Bureau of Industry and Security or the United States Department of State, (B) Her Majesty’s Treasury of the United Kingdom, (C) any committee of the United Nations Security Council, or (D) the European Union, (ii) any Person located, organized, or resident in, organized in, or a Governmental Authority or government instrumentality of, any Sanctioned Country and (iii) any Person directly or indirectly fifty percent (50%) or more owned or controlled by, or acting for the benefit or on behalf of, a Person described in (i) or (ii).

“ Sanctions Laws ” means all Applicable Laws concerning economic sanctions, including embargoes, export restrictions, the ability to make or receive international payments, the freezing or blocking of assets of targeted Persons, the ability to engage in transactions with specified Persons or countries or the ability to take an ownership interest in assets of specified Persons or located in a specified country, including any Applicable Laws threatening to impose economic sanctions on any person for engaging in proscribed behavior.

“ Sarbanes-Oxley Act ” means the Sarbanes-Oxley Act of 2002.

“ SEC ” means the U.S. Securities and Exchange Commission.

“ Severance Pay Plans ” means the severance plans set forth on Section 7.05(a) of the Company Disclosure Schedule.

“ Software ” means all (i) computer programs and other software including any and all software implementations of algorithms, models, methodologies, assemblers, applets, compilers, development tools, design tools and user interfaces, whether in source code or object code form, (ii) databases and compilations, including all data and collections of data, whether machine readable or otherwise, and (iii) updates, upgrades, modifications, improvements, enhancements, derivative works, new versions, new releases and corrections to or based on any of the foregoing.

“ Subsidiary ” means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are directly or indirectly owned by such Person. For purposes of this Agreement, a Subsidiary shall be considered a “wholly owned Subsidiary” of a Person as long as such Person directly or indirectly owns all of the securities or other ownership interests (excluding any securities or other ownership interests held by an individual director or officer required to hold such securities or other ownership interests pursuant to Applicable Law) of such Subsidiary.

“ Tax ” means any income, gross receipts, franchise, sales, use, ad valorem, property, payroll, withholding, excise, severance, transfer, employment, estimated, alternative or add-on minimum, value added, stamp, occupation, premium, environmental or windfall profits taxes, and any other taxes, charges, fees, levies, imposts, customs, duties, licenses or other assessments, together with any interest, penalties and additions to tax (including penalties for failure to file or late filing of any tax return, report or other filing, and any interest in respect of such penalties, additions to tax or additional amounts imposed by any federal, state, local, non-U.S. or other Taxing Authority).

“ Tax Return ” means any report, return, document, statement, declaration or other information or filing supplied or required to be supplied to any Taxing Authority with respect to Taxes, including information returns, claims for refunds, any documents with respect to or accompanying payments of estimated Taxes or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“ Tax Sharing Agreement ” means any existing agreement binding any Person or any of its Subsidiaries that provides for the allocation, apportionment, sharing or assignment of any Tax liability or benefit, or the transfer or assignment of income, revenues, receipts, or gains for the purpose of determining any Person’s Tax liability, other than agreements entered into in the ordinary course of business that do not have as a principal purpose addressing Tax matters.

“ Taxing Authority ” means any Governmental Authority responsible for the imposition or collection of any Tax.

“ Third Party ” means any Person or Group, other than the Company or any of its Affiliates, in the case of Parent, or Parent or any of its Affiliates, in the case of the Company, and the Representatives of such Persons, in each case, acting in such capacity.

“ Willful Breach ” means a material breach of this Agreement that is the consequence of an act or omission by a party with the actual knowledge that the taking of such act or failure to take such action would be a material breach of this Agreement.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Affected Employees	7.05(a)
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Company Superior Proposal	6.02(f)
Company Supplemental Indenture	6.04
Company Termination Fee	10.03(a)
Compensation Continuation Period	7.05(a)

Section 1.02 Other Definitional and Interpretative Provisions . The following rules of interpretation shall apply to this Agreement: (i) the words "hereof", "hereby", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) the table of contents and captions in this Agreement are included for convenience of reference only and shall be ignored in the construction or interpretation hereof; (iii) references to Articles, Sections and Exhibits are to Articles, Sections and Exhibits of this Agreement unless otherwise specified; (iv) all Exhibits and schedules annexed to this Agreement or referred to in this Agreement, including the Company Disclosure Schedule and the Parent Disclosure Schedule, are incorporated in and made a part of this Agreement as if set forth in full in this Agreement; (v) any capitalized term used in any Exhibit or schedules annexed to this Agreement, including the Company Disclosure Schedule or the Parent Disclosure Schedule, but not otherwise defined therein shall have the meaning set forth in this Agreement; (vi) any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular, and references to any gender shall include all genders; (vii) whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import; (viii) "writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form; (ix) references to any Applicable Law shall be deemed to refer to such Applicable Law as amended from time to time and to any rules or regulations promulgated thereunder; (x) references to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; provided that with respect to any Contract listed on any schedule annexed to this Agreement, including the Company Disclosure Schedule or the Parent Disclosure Schedule, all such amendments, modifications or supplements (other than such amendments, modifications or supplements that are immaterial) must also be listed in the appropriate schedule; (xi) references to any Person include the successors and permitted assigns of that Person; (xii) references "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively; (xiii) references to "dollars" and "$" means U.S. dollars; (xiv) the term "made available" and words of similar import mean that the relevant documents, instruments or materials were (A) with respect to Parent, posted and made available to Parent on the Company due diligence data site (or in any "clean room" or as otherwise provided on an "outside counsel only" basis), or, with respect to the Company, posted or made available to the Company on the Parent due diligence data site (or in any "clean room" or as otherwise provided on an "outside counsel only" basis), as applicable, in each case, prior to the date hereof; or (B) filed or furnished to the SEC prior to the date hereof; (xv) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other theory extends and such phrase shall not mean "if"; and (xvi) the parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE II

CLOSING; THE MERGER

Section 2.01 Closing . The closing of the Merger (the " Closing ") shall take place in New York City at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York, 10022 at 10:00 a.m., Eastern time, on the third (3rd) Business Day after the date the conditions set forth in Article IX (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted by Applicable Law, waiver of such conditions by the party or parties entitled to the benefit thereof at the Closing) have been satisfied or, to the extent permitted by Applicable Law, waived by the party or parties entitled to the benefit thereof, or at such other place, at such other time or on such other date as Parent and the Company may mutually agree (the date on which the Closing occurs, the " Closing Date ").

Section 2.02 The Merger .

(a) At the Closing, the Company shall file a certificate of merger (the " Certificate of Merger ") with the Delaware Secretary of State and make all other filings or recordings required by the General Corporation Law of the State of Delaware (the " DGCL ") in connection with the Merger. The Merger shall become effective at such time (the " Merger Effective Time ") as the Certificate of Merger is duly filed with the Delaware Secretary of State (or at such later time as Parent and the Company shall agree and is specified in the Certificate of Merger).

(b) At the Merger Effective Time, Merger Sub shall be merged with and into the Company in accordance with the DGCL (the " Merger "), whereupon the separate existence of Merger Sub shall cease, and the Company shall survive as the surviving corporation in the merger (the " Surviving Corporation ").

(c) From and after the Merger Effective Time, the Surviving Corporation shall possess all the rights, powers, privileges and franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of the Company and Merger Sub, all as provided under the DGCL.

(d) Each New CVR issued as part of the Merger Consideration hereunder will be substantially in the form attached as Annex A to the New CVR Agreement (each, a " New CVR Certificate ").

Section 2.03 Conversion of Shares . At the Merger Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of the Company Common Stock:

(a) other than (i) shares of Company Common Stock to be cancelled pursuant to Section 2.03(b) and (ii) Dissenting Shares (such shares together with the shares of Company Common Stock to be cancelled pursuant to Section 2.03(b) , collectively, the " Excluded Shares "), each share of Company Common Stock outstanding immediately prior to the Merger Effective Time shall be converted into the right to receive (A) one (the " Exchange Ratio ") share of Parent Common Stock (the " Share Consideration "), subject to Section 2.08 with respect to fractional shares, (B) $50.00 in cash without interest (the " Cash Consideration ") and (C) one contingent value right (a " New CVR ") issued by Parent subject to and in accordance with the New CVR Agreement (the consideration contemplated by subclauses (A), (B) and (C) together, the " Merger Consideration ");

(b) (i) each share of Company Common Stock held by the Company as treasury stock or owned by Parent or Merger Sub immediately prior to the Merger Effective Time (other than any such shares owned by Parent or Merger Sub in a fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account) shall be cancelled, and no consideration shall be paid with respect thereto and (ii) each share of Company Common Stock held by any wholly owned Subsidiary of either the Company or Parent (other than Merger Sub) immediately prior to the Merger Effective Time (other than shares held in a fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account) shall be converted into such number of fully paid and non-assessable shares of common stock of the Surviving Corporation such that the ownership percentage of any such Subsidiary in the Surviving Corporation immediately following the Merger Effective Time shall equal the ownership percentage of such Subsidiary in the Company immediately prior to the Merger Effective Time;

(c) each share of common stock of Merger Sub, par value $0.01 per share, issued and outstanding immediately prior to the Merger Effective Time shall be converted into and become one share of common stock, par value $0.01 per share, of the Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute (together with any share of common stock of the Surviving Corporation described in Section 2.03(b)(ii)) the only outstanding shares of capital stock of the Surviving Corporation; and

(d) all outstanding shares of Company Common Stock shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and (i) each share of Company Common Stock that was, immediately prior to the Merger Effective Time, represented by a certificate (each, a " Certificate ") and (ii) each uncertificated share of Company Common Stock which, immediately prior to the Merger Effective Time, was registered to a holder on the stock transfer books of the Company (an " Uncertificated Share ") shall (in each case, other than with respect to Excluded Shares) thereafter represent only the right to receive (A) the Merger Consideration and (B) with respect to the Share Consideration, the right to receive (1) any dividends or other distributions pursuant to Section 2.04(f) and (2) any cash in lieu of any fractional shares of Parent Common Stock pursuant to Section 2.08 , in each case to be issued or paid in accordance with Section 2.04 , without interest.

Section 2.04 Surrender and Payment .

(a) Prior to the Merger Effective Time, Parent shall appoint a commercial bank or trust company reasonably acceptable to the Company (the " Exchange Agent ") and enter into an exchange agent agreement with the Exchange Agent reasonably acceptable to the Company (the " Exchange Agent Agreement ") for the purpose of exchanging (i) Certificates or (ii) Uncertificated Shares for the Merger Consideration payable in respect of the shares of Company Common Stock. As of the Merger Effective Time, Parent shall deposit with the Exchange Agent, for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Section 2.04 through the Exchange Agent, (x) certificates (or evidence of shares in book-entry form) representing the shares of Parent Common Stock issuable pursuant to Section 2.03(a) in exchange for outstanding shares of Company Common Stock, (y) cash sufficient to pay the aggregate Cash Consideration payable pursuant to Section 2.03(a) and (z) New CVR Certificates representing the New CVRs issuable pursuant to Section 2.03(a) and the New CVR Agreement. Parent agrees to make available, directly or indirectly, to the Exchange Agent from time to time as needed additional cash sufficient to pay any dividends or other distributions to which such holders are entitled pursuant to Section 2.04(f) and cash in lieu of any fractional share of Parent Common Stock to which such holder is entitled pursuant to Section 2.08 . Promptly after the Merger Effective Time (and in no event more than two (2) Business Days following the Closing Date), Parent shall send, or shall cause the Exchange Agent to send, to each holder of shares of Company Common Stock at the Merger Effective Time a letter of transmittal and instructions (which shall be in a form reasonably acceptable to the Company and substantially finalized prior to the Merger Effective Time and which shall specify that delivery shall be effected, and risk of loss and title shall pass, only upon proper delivery of the Certificates or transfer of the Uncertificated Shares to the Exchange Agent) for use in such exchange. All certificates (or evidence of shares in book-entry form) representing shares of Parent Common Stock and New CVR Certificates and cash deposited with the Exchange Agent pursuant to this Section 2.04 shall be referred to in this Agreement as the " Exchange Fund ". Parent shall cause the Exchange Agent to deliver the Merger Consideration contemplated to be issued or paid pursuant to this Article II out of the Exchange Fund. The Exchange Fund shall not be used for any other purpose. The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent; provided that such cash shall only be invested in the manner provided in the Exchange Agent Agreement; and provided , further , that no such investment or losses thereon shall affect the Merger Consideration payable to holders of Company Common Stock entitled to receive such consideration or cash in lieu of fractional interests; provided , further , that to the extent necessary to pay the Merger Consideration, Parent shall promptly cause to be provided additional funds to the Exchange Agent for the benefit of holders of Company Common Stock entitled to receive such consideration in the amount of any such losses. Any interest and other income resulting from such investments shall be the property of, and paid to, Parent upon termination of the Exchange Fund.

(b) Each holder of shares of Company Common Stock that have been converted into the right to receive the Merger Consideration shall be entitled to receive, upon (i) surrender to the Exchange Agent of a Certificate, together with a properly completed and duly executed letter of transmittal, or (ii) receipt of an "agent's message" by the Exchange Agent (or such other evidence, if any, of transfer as the Exchange Agent may reasonably request) in the case of a book-entry transfer of Uncertificated Shares, the Merger Consideration in respect of each share of the Company Common Stock represented by such Certificate or Uncertificated Share (including cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect to the Share Consideration as contemplated by Section 2.08 and Section 2.04(f)). The shares of Parent Common Stock constituting the Share Consideration, at Parent's option, shall be in uncertificated book-entry form, unless a physical certificate is requested by a holder of shares of Company Common Stock or is otherwise required under Applicable Law.

(c) If any portion of the Merger Consideration (or cash in lieu of any fractional shares of Parent Common Stock or any dividends and distributions with respect to the Share Consideration as contemplated by Section 2.08 or Section 2.04(f)) is to be paid to a Person other than the Person in whose name the surrendered Certificate or the transferred Uncertificated Share is registered, it shall be a condition to such payment that (i) either such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer or such Uncertificated Share shall be properly transferred and (ii) the Person requesting such payment shall pay to the Exchange Agent any transfer or similar Taxes required as a result of such payment to a Person other than the registered holder of such Certificate or Uncertificated Share or establish to the satisfaction of the Exchange Agent that such transfer or similar Taxes have been paid or are not payable.

(d) Upon the Merger Effective Time, there shall be no further registration of transfers of shares of Company Common Stock thereafter on the records of the Company. If, after the Merger Effective Time, Certificates or Uncertificated Shares are presented to Parent, the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged for the Merger Consideration (and cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect to the Share Consideration as contemplated by Section 2.08 and Section 2.04(f)) with respect thereto in accordance with the procedures set forth in, or as otherwise contemplated by, this Article II (including this Section 2.04).

(e) Any portion of the Exchange Fund that remains unclaimed by the holders of shares of Company Common Stock twelve (12) months following the Closing Date shall be delivered to Parent or as otherwise instructed by Parent, and any such holder who has not exchanged shares of Company Common Stock for the Merger Consideration in accordance with this Section 2.04 prior to that time shall thereafter look only to Parent for payment of the Merger Consideration (and cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect to the Share Consideration as contemplated by Section 2.08 and Section 2.04(f)), without any interest thereon. Notwithstanding the foregoing, Parent and its Subsidiaries (including the Surviving Corporation and its Subsidiaries) shall not be liable to any holder of shares of Company Common Stock for any amounts properly paid to a public official in compliance with applicable abandoned property, escheat or similar laws. Any amounts remaining unclaimed by holders of shares of Company Common Stock immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Authority shall become, to the extent permitted by Applicable Law, the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

(f) Following the surrender of any Certificates, along with the delivery of a properly completed and duly executed letter of transmittal, or the transfer of any Uncertificated Shares, in each case as provided in this Section 2.04 , Parent shall pay, or cause to be paid, without interest, to the Person in whose name the shares of Parent Common Stock constituting the Share Consideration have been registered, (i) in connection with the payment of the Share Consideration, (x) the amount of any cash payable in lieu of fractional shares to which such Person is entitled pursuant to Section 2.08 , and (y) the aggregate amount of all dividends or other distributions payable with respect to such shares of Parent Common Stock with a record date on or after the Merger Effective Time that were paid prior to the time of such surrender or transfer, and (ii) at the appropriate payment date after the payment of the Merger Consideration, the amount of all dividends or other distributions payable with respect to whole shares of Parent Common Stock constituting the Share Consideration with a record date on or after the Merger Effective Time and prior to the time of such surrender or transfer and with a payment date subsequent to the time of such surrender or transfer. No dividends or other distributions with respect to shares of Parent Common Stock constituting the Share Consideration, and no cash payment in lieu of fractional shares pursuant to Section 2.08 , shall be paid to the holder of any Certificates not surrendered or of any Uncertificated Shares not transferred until such Certificates are surrendered and the holder thereof delivers a properly completed and duly executed letter of transmittal or such Uncertificated Shares are transferred, as the case may be, as provided in this Section 2.04 .

(g) The payment of any transfer, documentary, sales, use, stamp, registration, value added and other Taxes and fees (including any penalties and interest) incurred by a holder of Company Common Stock in connection with the Merger, and the filing of any related Tax Returns and other documentation with respect to such Taxes and fees, shall be the responsibility solely of such holder.

Section 2.05 Dissenting Shares . Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock that are issued and outstanding immediately prior to the Merger Effective Time and that are held by a stockholder who is entitled to demand and properly demands appraisal of such shares pursuant to, and who complies in all respects with, the provisions of Section 262 of the DGCL (such stockholders, the " Dissenting Stockholders " and, such shares of Company Common Stock, the " Dissenting Shares "), shall not be converted into or be exchangeable for the right to receive the Merger Consideration, but instead such holder shall be entitled to payment of the fair value of such Dissenting Shares in accordance with the provisions of Section 262 of the DGCL (and, at the Merger Effective Time, such Dissenting Shares shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and such holder shall cease to have any rights with respect thereto, except the right to receive the fair value of such Dissenting Shares in accordance with the provisions of Section 262 of the DGCL), unless and until such holder shall have failed to perfect or shall have effectively waived, withdrawn or lost rights to appraisal under the DGCL. If any Dissenting Stockholders shall have failed to perfect or shall have effectively waived, withdrawn or lost such rights, the Dissenting Shares held by such Dissenting Stockholder shall thereupon be deemed to have been converted, as of the Merger Effective Time, into the right to receive the Merger Consideration as provided in Section 2.03(a) (and cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect thereto as contemplated by Section 2.04(f) and Section 2.08), without interest. The Company shall give Parent prompt notice of any written demands for appraisal of any shares of Company Common Stock, attempted withdrawals of such demands and any other instruments served pursuant to the DGCL and received by the Company relating to stockholders' rights of appraisal in accordance with the provisions of Section 262 of the DGCL, and Parent shall have the opportunity to participate in all negotiations and proceedings with respect to all such demands. The Company shall not, except with the prior written consent of Parent, make any payment with respect to, settle or offer or agree to settle any such demands. Any portion of the Merger Consideration made available to the Exchange Agent pursuant to Section 2.04 to pay for shares of Company Common Stock for which appraisal rights have been perfected shall be returned to Parent upon demand.

Section 2.06 Company Equity Awards .

(a) Company Stock Options . At the Merger Effective Time, each compensatory option to purchase shares of Company Common Stock under any Company Stock Plan that is outstanding and unexercised immediately prior to the Merger Effective Time (each, a " Company Stock Option "), whether or not vested shall, by virtue of the Merger and without further action on the part of the holder thereof be:

(i) if such Company Stock Option is an In-the-Money Option, assumed by Parent and converted into (A) an option (an " Assumed In-the-Money Option ") to purchase, on the same terms and conditions (including applicable vesting, exercise and expiration provisions and any terms and conditions relating to accelerated vesting upon a termination of the holder's employment in connection with or following the Merger) as applied to each such Company Stock Option immediately prior to the Merger Effective Time, shares of Parent Common Stock, except that the number of shares of Parent Common Stock, rounded down to the nearest whole number of shares, subject to such Assumed In-the-Money Option shall equal the product of (1) the number of shares of Company Common Stock that were subject to such Company Stock Option immediately prior to the Merger Effective Time, multiplied by (2) the Equity Award Exchange Ratio, and the per-share exercise price, rounded up to the nearest whole cent, shall equal the quotient of (x) the exercise price per share of Company Common Stock at which such Company Stock Option was exercisable immediately prior to the Merger Effective Time, divided by (y) the Equity Award Exchange Ratio, and (B) the right to receive (1) if such In-the-Money Option was vested prior to the Merger Effective Time, one New CVR for each share of Company Common Stock underlying such In-the-Money Option immediately prior to the Merger Effective Time to be delivered within five (5) Business Days following the Merger Effective Time or (2) if such In-the-Money Option was not vested immediately prior to the Merger Effective Time, immediately upon, and subject to, the vesting of the Assumed In-the-Money Option, the Unvested Equity Award CVR Consideration (as defined in Section 2.06(e) below); or

(ii) if such Company Stock Option is an Out-of-the-Money Option, assumed by Parent and converted into an option (an " Assumed Out-of-the-Money Stock Option ") to purchase, on the same terms and conditions (including applicable vesting, exercise and expiration provisions and any terms and conditions relating to accelerated vesting upon a termination of the holder's employment in connection with or following the Merger) as applied to each such Company Stock Option immediately prior to the Merger Effective Time, shares of Parent Common Stock, except that the number of shares of Parent Common Stock, rounded down to the nearest whole number of shares, subject to such Assumed Out-of-the-Money Stock Option shall equal the product of (1) the number of shares of Company Common Stock that were subject to such Company Stock Option immediately prior to the Merger Effective Time, multiplied by (2) the Out-of-the-Money Option Exchange Ratio, and the per-share exercise price, rounded up to the nearest whole cent, shall equal the quotient of (x) the exercise price per share of Company Common Stock at which such Company Stock Option was exercisable immediately prior to the Merger Effective Time, divided by (y) the Out-of-the-Money Option Exchange Ratio;

provided that each Company Stock Option that is an "incentive stock option" (as defined in Section 422 of the Code) shall be adjusted in accordance with the requirements of Section 424 of the Code, and each Company Stock Option shall be adjusted in a manner that complies with Section 409A of the Code.

(b) Company Restricted Stock Units . At the Merger Effective Time, each restricted stock unit award with respect to shares of Company Common Stock outstanding under any Company Stock Plan that vests solely based on the passage of time (each, a " Company RSU Award ") shall, by virtue of the Merger and without further action on the part of the holder thereof, be assumed by Parent and shall be converted into (i) a restricted unit award (each, an " Assumed Restricted Unit Award ") that settles in a number of shares of Parent Common Stock equal to the number of shares of Company Common Stock underlying the Company RSU Award multiplied by the Equity Award Exchange Ratio, rounded up to the nearest whole number of shares, and (ii) the right to receive, immediately upon, and subject to, the vesting of the Assumed Restricted Unit Award, the Unvested Equity Award CVR Consideration. Each Assumed Restricted Unit Award shall continue to have, and shall be subject to, the same terms and conditions as applied to the corresponding Company RSU Award immediately prior to the Merger Effective Time (including any terms and conditions relating to accelerated vesting upon a termination of the holder's employment in connection with or following the Merger).

(c) Company Performance-Based Restricted Stock Units . At the Merger Effective Time, each restricted stock unit award with respect to shares of Company Common Stock outstanding under any Company Stock Plan that vests based on the achievement of performance goals (each, a " Company PSU Award ") shall, by virtue of the Merger and without further action on the part of the holder thereof, be assumed by Parent and shall be converted into (i) a restricted stock unit award (each, an " Assumed Performance Unit Award ") that settles in a number of shares of Parent Common Stock equal to the product of the number of shares of Company Common Stock underlying the Company PSU Award (with such number of shares determined by deeming the applicable performance goals to be achieved at the greater of (A) the target level and (B) the actual level of achievement through the end of the calendar quarter immediately preceding the quarter in which the Merger Effective Time occurs as determined by the Management Compensation and Development Committee of the Board of Directors of the Company prior to the Merger Effective Time) multiplied by the Equity Award Exchange Ratio, rounded up to the nearest whole number of shares, and (ii) the right to receive, immediately upon, and subject to, the vesting of the Assumed Performance Unit Award, the Unvested Equity Award CVR Consideration. Each Assumed Performance Unit Award shall continue to have, and shall be subject to, the same terms and conditions as applied to the corresponding Company PSU Award (other than performance-based vesting conditions) immediately prior to the Merger Effective Time (including any terms and conditions relating to accelerated vesting upon a termination of the holder's employment in connection with or following the Merger).

(d) Company Restricted Stock Awards . At the Merger Effective Time, each restricted stock award with respect to shares of Company Common Stock outstanding under any Company Stock Plan that vests based on the passage of time and/or the achievement of performance goals (each, a " Company RSA ") shall, by virtue of the Merger and without further action on the part of the holder thereof, be assumed by Parent and shall be converted into (i) a restricted stock award (each, an " Assumed Restricted Stock Award ") that settles in a number of shares of Parent Common Stock equal to the number of shares of Company Common Stock underlying the Company RSA multiplied by the Equity Award Exchange Ratio, rounded up to the nearest whole number of shares, and (ii) the right to receive, immediately upon, and subject to, the vesting of the Assumed Restricted Stock Award, the Unvested Equity Award CVR Consideration. Each Assumed Restricted Stock Award shall continue to have, and shall be subject to, the same terms and conditions as applied to the corresponding Company RSA immediately prior to the Merger Effective Time (including any terms and conditions relating to accelerated vesting upon a termination of the holder's employment in connection with or following the Merger).

(e) Unvested Equity Award CVR Consideration . With respect to each In-the-Money Option that is unvested as of immediately prior to the Merger Effective Time, each Company RSU Award, each Company PSU Award, and each Company RSA, the " Unvested Equity Award CVR Consideration " means either (i) if the Vesting Date (as defined below) occurs prior to the Milestone Payment Record Date (as defined in the New CVR Agreement) and prior to the Termination Date (as defined in the New CVR Agreement), one New CVR in respect of each share of Company Common Stock underlying such In-the-Money Option, Company RSU Award, Company PSU Award, or Company RSA, as applicable, immediately prior to the Merger Effective Time, (ii) if the Vesting Date occurs on or after the Milestone Payment Record Date, a cash payment equal to the Milestone Payment (as defined in the New CVR Agreement) in respect of each share of Company Common Stock underlying such In-the-Money Option, Company RSU Award, Company PSU Award, or Company RSA, as applicable, immediately prior to the Merger Effective Time, or (iii) if the Vesting Date occurs on or after the Termination Date and the Milestone (as defined in the New CVR Agreement) was not achieved prior to the Termination Date, no additional consideration. As used in this Section 2.06(e) , " Vesting Date " means the date on which the Assumed In-the-Money Option, Assumed Restricted Unit Award, Assumed Performance Unit Award, or Assumed Restricted Stock Award that was issued in exchange for the applicable In-the-Money Option, Company RSU Award, Company PSU Award, or Company RSA, as applicable, becomes vested. For purposes of this Section 2.06(e) , the number of shares of Company Common Stock underlying each Company PSU Award immediately prior to the Merger Effective Time will be determined in accordance with Section 2.06(c)(i) .

(f) Reservation of Shares . As soon as practicable following the Closing Date (but in no event more than five (5) Business Days following the Closing Date), Parent shall file a registration statement on Form S-8 (or any successor form) or, if required, Form S-3 (or any successor form), with respect to the issuance of (i) the shares of Parent Common Stock subject to the Assumed In-the-Money Options, the Assumed Out-of-the-Money Options, the Assumed Restricted Unit Awards, the Assumed Performance Unit Awards, and the Assumed Restricted Stock Awards, and (ii) the New CVRs to holders of Assumed In-the-Money Options that are unvested as of immediately prior to the Merger Effective Time, Assumed Restricted Unit Awards, Assumed Performance Unit Awards, and Assumed Restricted Stock Awards, and shall use its reasonable best efforts to maintain the effectiveness of such registration statement or registration statements (and maintain the current status of the prospectus or prospectuses contained therein) for so long as the Assumed In-the-Money Options, the Assumed Out-of-the-Money Options, the Assumed Restricted Unit Awards, the Assumed Performance Unit Awards, and the Assumed Restricted Stock Awards remain outstanding.

(g) Board Actions . Prior to the Merger Effective Time, the Board of Directors of the Company (and/or the Management Compensation and Development Committee of the Board of Directors of the Company) and the Board of Directors of Parent (and/or the Compensation and Management Development Committee of the Board of Directors of Parent) shall adopt such resolutions as are necessary to give effect to the transactions contemplated by this Section 2.06 .

Section 2.07 Adjustments . Without limiting or affecting any of the provisions of Section 6.01 or Section 7.01 , if, during the period between the date of this Agreement and the Merger Effective Time, any change in the outstanding shares of capital stock of the Company or Parent shall occur as a result of any reclassification, recapitalization, stock split (including reverse stock split), merger, combination, exchange or readjustment of shares, subdivision or other similar transaction, or any stock dividend thereon with a record date during such period, the Merger Consideration and any other amounts payable pursuant to this Agreement shall be appropriately adjusted to eliminate the effect of such event on the Merger Consideration or any such other amounts payable pursuant to this Agreement.

Section 2.08 Fractional Shares . Notwithstanding anything in this Agreement to the contrary, no fractional shares of Parent Common Stock or fractional New CVRs shall be issued in the Merger. Each holder of shares of Company Common Stock who would otherwise have been entitled to receive as a result of the Merger a fraction of a share of Parent Common Stock or a fractional New CVR (after aggregating all shares represented by the Certificates and Uncertificated Shares delivered by such holder), as the case may be, shall receive, in lieu thereof, cash (without interest) in an amount (rounded down to the nearest cent) representing such holder's proportionate interest in the net proceeds from the sale by the Exchange Agent on behalf of all such holders of shares of Parent Common Stock or New CVRs, respectively, that would otherwise be issued.

Section 2.09 Withholding Rights . Each of the Exchange Agent, Parent and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of any Applicable Law, including federal, state, local or non-U.S. Tax law. If the Exchange Agent, Parent or the Surviving Corporation, as the case may be, so withholds and pays over all amounts so withheld to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Exchange Agent, Parent or the Surviving Corporation, as the case may be, made such deduction and withholding.

Section 2.10 Lost Certificates . If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if reasonably required by the Surviving Corporation or the Exchange Agent, the posting by such Person of a customary bond issued for lost, stolen or destroyed stock certificates, in such reasonable amount as the Surviving Corporation or the Exchange Agent may direct, as indemnity against any claim that may be made against the Surviving Corporation or the Exchange Agent, with respect to such Certificate, the Exchange Agent will, if such holder has otherwise delivered a properly completed and duly executed letter of transmittal, issue, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration to be paid in respect of the shares of Company Common Stock represented by such Certificate, as contemplated by this Article II (including Section 2.04).

Section 2.11 Further Assurances . At and after the Merger Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company, any of its Subsidiaries or Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company, any of its Subsidiaries or Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

ARTICLE III

ORGANIZATIONAL DOCUMENTS; DIRECTORS AND OFFICERS

Section 3.01 Certificate of Incorporation and Bylaws of the Surviving Corporation . (a) The certificate of incorporation of Merger Sub, as in effect immediately prior to the Merger Effective Time, shall be the certificate of incorporation of the Surviving Corporation from and after the Merger Effective Time until thereafter amended as provided therein or by Applicable Law and (b) the bylaws of Merger Sub, as in effect immediately prior to the Merger Effective Time, shall be the bylaws of the Surviving Corporation from and after the Merger Effective Time until thereafter amended as provided therein, in the certificate of incorporation of the Surviving Corporation or by Applicable Law, except in each case that the name of the corporation reflected therein shall be "Celgene Corporation".

Section 3.02 Directors and Officers of the Surviving Corporation . From and after the Merger Effective Time, until their respective successors are duly elected or appointed and qualified in accordance with Applicable Law, (a) the directors of Merger Sub immediately prior to the Merger Effective Time shall be the directors of the Surviving Corporation and (b) the officers of the Company immediately prior to the Merger Effective Time shall be the officers of the Surviving Corporation.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to Section 11.05 , except (i) as disclosed in any publicly available Company SEC Document or (ii) as set forth in the Company Disclosure Schedule, the Company represents and warrants to Parent that:

Section 4.01 Corporate Existence and Power . The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Company has all requisite corporate power and authority required to own or lease all of its properties or assets and to carry on its business as now conducted. The Company is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified or in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Prior to the date of this Agreement, the Company has made available to Parent true and complete copies of the certificate of incorporation and bylaws of the Company as in effect on the date of this Agreement (the " Company Organizational Documents ").

Section 4.02 Corporate Authorization .

(a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated by this Agreement are within the corporate powers and authority of the Company and, except for the Company Stockholder Approval, have been duly authorized by all necessary corporate action on the part of the Company. The affirmative vote of the holders of at least a majority of the outstanding shares of Company Common Stock adopting this Agreement is the only vote of the holders of any of the Company's capital stock necessary in connection with the consummation of the Merger (the " Company Stockholder Approval "). This Agreement has been duly executed and delivered by the Company and (assuming due authorization, execution and delivery by Parent and Merger Sub) constitutes a valid, legal and binding agreement of the Company enforceable against the Company in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject to general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity (collectively, the " Bankruptcy and Equity Exceptions ")).

(b) At a meeting duly called and held, the Board of Directors of the Company unanimously adopted resolutions (i) determining that this Agreement and the transactions contemplated hereby (including the Merger) are fair to and in the best interests of the Company and its stockholders, (ii) approving, adopting and declaring advisable this Agreement and the transactions contemplated hereby (including the Merger), (iii) directing that the adoption of this Agreement be submitted to a vote at a meeting of the Company's stockholders, and (iv) recommending adoption of this Agreement by the Company's stockholders (such recommendation, the " Company Board Recommendation "). Except as permitted by Section 6.02 , the Board of Directors of the Company has not subsequently rescinded, modified or withdrawn any of the foregoing resolutions.

Section 4.03 Governmental Authorization . The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby require no action by or in respect of, Consents of, or Filings with, any Governmental Authority other than (a) the filing of the Certificate of Merger with the Delaware Secretary of State and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (b) compliance with any applicable requirements of the HSR Act, (c) compliance with and Filings under any applicable Antitrust Laws of any non-U.S. jurisdictions (collectively, " Foreign Antitrust Laws "), (d) compliance with any applicable requirements of the 1933 Act, the 1934 Act and any other applicable U.S. state or federal securities laws or pursuant to the rules of the NASDAQ Global Select Market and NASDAQ Global Market (collectively, " Nasdaq "), and (e) any other actions, Consents or Filings the absence of which has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.04 Non-contravention . The execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby do not and will not (a) contravene, conflict with, or result in any violation or breach of any provision of the Company Organizational Documents, (b) assuming compliance with the matters referred to in Section 4.03 and receipt of the Company Stockholder Approval, contravene, conflict with or result in any violation or breach of any provision of any Applicable Law, (c) assuming compliance with the matters referred to in Section 4.03 and receipt of the Company Stockholder Approval, require any Consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or any of its Subsidiaries is entitled under, any provision of any Company Permit or any Contract binding upon the Company or any of its Subsidiaries, or (d) result in the creation or imposition of any Lien on any asset of the Company or any of its Subsidiaries, except, in the case of each of clauses (b) through (d), as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.05 Capitalization .

(a) The authorized capital stock of the Company consists of (i) 1,150,000,000 shares of Company Common Stock and (ii) 5,000,000 shares of preferred stock, par value $0.01 per share (" Company Preferred Stock "). As of December 31, 2018, there were outstanding (A) 700,238,758 shares of Company Common Stock (of which 17,065 shares of Company Common Stock were subject to Company RSAs), (B) no shares of Company Preferred Stock, (C) Company Stock Options to purchase an aggregate of 71,139,116 shares of Company Common Stock, (D) 11,676,491 shares of Company Common Stock were subject to outstanding Company RSU Awards, (E) 652,837 shares of Company Common Stock were subject to outstanding Company PSU Awards, determined assuming target performance levels were achieved, (F) 27,623,841 additional shares of Company Common Stock were reserved for issuance pursuant to the Company Stock Plans and (G) 43,273,855 Abraxis CVRs subject to, and having the terms set forth in, the Abraxis CVR Agreement. Except as set forth in this Section 4.05(a) and for changes since December 31, 2018 resulting from (x) the exercise or vesting and settlement of Company Equity Awards outstanding on such date or issued on or after such date to the extent permitted by Section 6.01 , or (y) the issuance of Equity Securities of the Company on or after the date hereof to the extent permitted by Section 6.01 , there are no issued, reserved for issuance or outstanding Equity Securities of the Company.

(b) All outstanding shares of capital stock of the Company have been, and all shares that may be issued pursuant to any Company Stock Plan will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights. No Subsidiary of the Company owns any shares of capital stock of the Company (other than any such shares owned by Subsidiaries of the Company in a fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account). There are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of the Company have the right to vote. There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Equity Securities of the Company. Neither the Company nor any of its Subsidiaries is a party to any agreement with respect to the voting of any Equity Securities of the Company.

Section 4.06 Subsidiaries .

(a) Each Major Subsidiary of the Company is a corporation or other entity duly incorporated or organized, validly existing and in good standing (except to the extent such concept is not applicable under Applicable Law of such Subsidiary's jurisdiction of incorporation, formation or organization, as applicable) under the laws of its jurisdiction of incorporation, formation or organization, as applicable, and has all corporate or other organizational powers and authority, as applicable, required to own, lease and operate its properties and assets and to carry on its business as now conducted, except for those jurisdictions where failure to be so organized, validly existing and in good standing or to have such power or authority has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each such Major Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified or in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) All of the issued and outstanding capital stock or other Equity Securities of each Subsidiary of the Company have been validly issued and are fully paid and nonassessable (except to the extent such concepts are not applicable under Applicable Law of such Subsidiary's jurisdiction of incorporation, formation or organization, as applicable) and are owned by the Company, directly or indirectly, free and clear of any Lien (other than any restrictions imposed by Applicable Law) and free of preemptive rights, rights of first refusal, subscription rights or similar rights of any Person and transfer restrictions (other than transfer restrictions under Applicable Law or under the organizational documents of such Subsidiary). There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Equity Securities of any Subsidiary of the Company. Except for the capital stock or other Equity Securities of its Subsidiaries and publicly traded securities held for investment which do not exceed five percent (5%) of the outstanding securities of any entity, the Company does not own, directly or indirectly, any capital stock or other Equity Securities of any Person.

Section 4.07 SEC Filings and the Sarbanes-Oxley Act .

(a) The Company has timely filed with or furnished to the SEC all reports, schedules, forms, statements, prospectuses, registration statements and other documents required to be filed with or furnished to the SEC by the Company since January 1, 2017 (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the " Company SEC Documents "). No Subsidiary of the Company is required to file any report, schedule, form, statement, prospectus, registration statement or other document with the SEC.

(b) As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), the Company SEC Documents filed or furnished prior to the date of this Agreement complied, and each Company SEC Document filed or furnished subsequent to the date of this Agreement (assuming, in the case of the Joint Proxy Statement/Prospectus, that the representation and warranty set forth in Section 5.09 is true and correct) will comply, in all material respects with the applicable requirements of Nasdaq, the 1933 Act, the 1934 Act and the Sarbanes-Oxley Act, as the case may be.

(c) As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), each Company SEC Document filed or furnished prior to the date of this Agreement did not, and each Company SEC Document filed or furnished subsequent to the date of this Agreement (assuming, in the case of the Joint Proxy Statement/Prospectus, that the representation and warranty set forth in Section 5.09 is true and correct) will not, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(d) The Company is, and since January 1, 2017 has been, in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of Nasdaq.

(e) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries have established and maintain disclosure controls and procedures (as defined in Rule 13a-15 under the 1934 Act) designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others within those entities, including during the periods in which the periodic reports required under the 1934 Act are being prepared. For purposes of this Agreement, " principal executive officer " and " principal financial officer " shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(f) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries have established and maintain a system of internal controls over financial reporting (as defined in Rule 13a-15 under the 1934 Act) (" internal controls ") designed to provide reasonable assurance regarding the reliability of the Company's financial reporting and the preparation of the Company's financial statements for external purposes in accordance with GAAP, and the Company's principal executive officer and principal financial officer have disclosed, based on their most recent evaluation of such internal controls prior to the date of this Agreement, to the Company's auditors and the audit committee of the Board of Directors of the Company (i) all significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls. The Company has made available to Parent prior to the date of this Agreement a true and complete (in all material respects) summary of any disclosure of the type described in the preceding sentence made by management to the Company's auditors and audit committee during the period beginning January 1, 2017 and ending as of the date hereof.

(g) Since January 1, 2017, each of the principal executive officer and principal financial officer of the Company (or each former principal executive officer and principal financial officer of the Company, as applicable) has made all certifications required by Rules 13a-14 and 15d-14 under the 1934 Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC and Nasdaq, and the statements contained in any such certifications are true and complete in all material respects as of the date on which they were made.

Section 4.08 Financial Statements and Financial Matters .

(a) The audited consolidated financial statements and unaudited consolidated interim financial statements of the Company included or incorporated by reference in the Company SEC Documents present fairly in all material respects, in conformity with GAAP applied on a consistent basis during the periods presented (except as may be indicated in the notes thereto), the consolidated financial position of the Company and its Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal and recurring year-end audit adjustments in the case of any unaudited interim financial statements). Such consolidated financial statements have been prepared in all material respects from the books and records of the Company and its Subsidiaries.

(b) From January 1, 2017 to the date of this Agreement, the Company has not received written notice from the SEC or any other Governmental Authority indicating that any of its accounting policies or practices are or may be the subject of any review, inquiry, investigation or challenge by the SEC or any other Governmental Authority.

Section 4.09 Disclosure Documents . The information relating to the Company and its Subsidiaries that is provided by the Company, any of its Subsidiaries or any of their respective Representatives for inclusion or incorporation by reference in the Registration Statement or the Joint Proxy Statement/Prospectus will not (a) in the case of the Registration Statement, at the time the Registration Statement or any amendment or supplement thereto becomes effective and at the time of the Company Stockholder Meeting and the Parent Stockholder Meeting, and (b) in the case of the Joint Proxy Statement/Prospectus, at the time the Joint Proxy Statement/Prospectus or any amendment or supplement thereto is first mailed to the stockholders of the Company and the stockholders of Parent and at the time of the Company Stockholder Meeting and the Parent Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing provisions of this Section 4.09 , no representation or warranty is made by the Company with respect to information or statements made or incorporated by reference in the Registration Statement or the Joint Proxy Statement/Prospectus which were not supplied by or on behalf of the Company.

Section 4.10 Absence of Certain Changes .

(a) (i) Since the Company Balance Sheet Date through the date of this Agreement, except in connection with or related to the process in connection with which the Company and its Representatives discussed and negotiated this Agreement and the transactions contemplated hereby, the business of the Company and its Subsidiaries has been conducted in all material respects in the ordinary course of business consistent with past practice and (ii) since the Company Balance Sheet Date, there has not been any event, change, effect, development or occurrence that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Since the Company Balance Sheet Date through the date of this Agreement, there has not been any action taken by the Company or any of its Subsidiaries that, if taken during the period from the date of this Agreement through the Merger Effective Time without Parent's consent, would constitute a breach of clause (b), (c)(iii), (f), (h), (l) or (m) of Section 6.01 (or solely with respect to the foregoing clauses, clause (o) of Section 6.01).

Section 4.11 No Undisclosed Material Liabilities . There are no liabilities or obligations of the Company or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, that would be required by GAAP to be reflected on the consolidated balance sheet of the Company and its Subsidiaries, other than (a) liabilities or obligations disclosed and provided for in the Company Balance Sheet or in the notes thereto, (b) liabilities or obligations incurred in the ordinary course of business consistent with past practice since the Company Balance Sheet Date, (c) liabilities arising in connection with the transactions contemplated hereby, or (d) other liabilities or obligations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There are no off-balance sheet arrangements of any type pursuant to any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K promulgated under the 1933 Act (" Regulation S-K ") that have not been so described in the Company SEC Documents.

Section 4.12 Litigation . There is no claim, action, proceeding or suit or, to the knowledge of the Company, investigation pending or, to the knowledge of the Company, threatened (in the case of clause (b) below, as of the date hereof) against the Company, any of its Subsidiaries, any present or former officers, directors or employees of the Company or any of its Subsidiaries in their respective capacities as such, or any of the respective properties or assets of the Company or any of its Subsidiaries, before (or, in the case of threatened claims, actions, suits, investigations or proceedings, that would be before) any Governmental Authority (a) that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or (b) that, as of the date of this Agreement, in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Merger or any of the other transactions contemplated hereby. There is no Order outstanding against the Company, any of its Subsidiaries, any present or former officers, directors or employees of the Company or any of its Subsidiaries in their respective capacities as such, or any of the respective properties or assets of any of the Company or any of its Subsidiaries, that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or that, as of the date of this Agreement, would reasonably be expected to prevent, enjoin, alter or materially delay the Merger or any of the other transactions contemplated hereby.

Section 4.13 Permits . Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and each of its Subsidiaries hold all governmental licenses and Consents necessary for the operation of its respective businesses (the " Company Permits "). The Company and each of its Subsidiaries are, and since January 1, 2017 have been, in compliance with the terms of the Company Permits, except for failures to comply that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There is no claim, action, proceeding or suit or, to the knowledge of the Company, investigation pending, or, to the knowledge of the Company, threatened that seeks, or, to the knowledge of the Company, any existing condition, situation or set of circumstances that would reasonably be expected to result in, the revocation, cancellation, termination, non-renewal or adverse modification of any Company Permit, except where such revocation, cancellation, termination, non-renewal or adverse modification has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.14 Compliance with Laws . The Company and each of its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Applicable Laws, except for failures to comply that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.15 Regulatory Matters .

(a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) each of the Company and its Subsidiaries holds (A) all authorizations under the United States Food, Drug and Cosmetic Act of 1938, as amended (the " FDCA "), the Public Health Service Act, as amended (the " PHSA "), and the regulations of the United States Food and Drug Administration (the " FDA ") promulgated thereunder, and (B) authorizations of any applicable Governmental Authority that are concerned with the quality, identity, strength, purity, safety, efficacy, manufacturing, marketing, distribution, sale, pricing, import or export of any of the Company Products (any such Governmental Authority, a " Company Regulatory Agency ") necessary for the lawful operating of the businesses of the Company and each of its Subsidiaries as currently conducted (the " Company Regulatory Permits "); (ii) all such Company Regulatory Permits are valid and in full force and effect; and (iii) the Company and its Subsidiaries are in compliance with the terms of all Company Regulatory Permits. All Company Regulatory Permits are in full force and effect, except where the failure to be in full force and effect has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Neither the Company nor any of its Subsidiaries are party to any material corporate integrity agreements, monitoring agreements, consent decrees, settlement orders, or similar agreements with or imposed by any Company Regulatory Agency.

(c) All pre-clinical and clinical investigations in respect of a Company Product or Company Product candidate conducted or sponsored by the Company or any of its Subsidiaries are being and, since January 1, 2017 have been, conducted in compliance with all Applicable Laws administered or issued by the applicable Company Regulatory Agencies, including (i) FDA standards for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical trials contained in Title 21 parts 50, 54, 56, 312, 314 and 320 of the Code of Federal Regulations, and (ii) any applicable federal, state and provincial Applicable Laws restricting the collection, use and disclosure of individually identifiable health information and personal information, except, in each case, for such noncompliance that has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(d) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, during the period beginning on January 1, 2017 and ending on the date hereof, neither the Company nor any of its Subsidiaries has received any written notice from the FDA or the European Medicines Agency (the " EMA ") or any foreign agency with jurisdiction over the development, marketing, labeling, sale, use handling and control, safety, efficacy, reliability, or manufacturing of the Company Products which would reasonably be expected to lead to the denial, limitation, revocation, or rescission of any of the Company Regulatory Permits or of any application for marketing approval currently pending before the FDA or such other Company Regulatory Agency.

(e) During the period beginning on January 1, 2017 and ending on the date hereof, all reports, documents, claims, permits and notices required to be filed, maintained or furnished to the FDA or any other Company Regulatory Agency by the Company and its Subsidiaries have been so filed, maintained or furnished, except where failure to file, maintain or furnish such reports, documents, claims, permits or notices have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. All such reports, documents, claims, permits and notices were true and complete in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing). Since January 1, 2017, neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any officer, employee, agent or distributor of the Company or any of its Subsidiaries, has made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Company Regulatory Agency, failed to disclose a material fact required to be disclosed to the FDA or any other Company Regulatory Agency, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of the Company or any of its Subsidiaries, that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Company Regulatory Agency to invoke any similar policy, except for any act or statement or failure to make a statement that has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, since January 1, 2017, (i) neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any officer, employee, agent or distributor of the Company or any of its Subsidiaries, has been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar Applicable Law or authorized by 21 U.S.C. § 335a(b) or any similar Applicable Law applicable in other jurisdictions in which material quantities of any of the Company Products or Company Product candidates are sold or intended by the Company to be sold; and (ii) neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any officer, employee, agent or distributor of the Company or any of its Subsidiaries, has been excluded from participation in any federal health care program or convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal health care program under Section 1128 of the Social Security Act of 1935, as amended, or any similar Applicable Law or program.

(f) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, as to each Company Product or Company Product candidate subject to the FDCA and the regulations of the FDA promulgated thereunder or any similar Applicable Law in any foreign jurisdiction in which material quantities of any of the Company Products or Company Product candidates are sold or intended by the Company or any of its Subsidiaries to be sold that is or has been developed, manufactured, tested, distributed or marketed by or on behalf of the Company or any of its Subsidiaries, each such Company Product or Company Product candidate is being or has been developed, manufactured, stored, distributed and marketed in compliance with all Applicable Laws, including those relating to investigational use, marketing approval, current good manufacturing practices, packaging, labeling, advertising, record keeping, reporting, and security. There is no action or proceeding pending or, to the knowledge of the Company, threatened, including any prosecution, injunction, seizure, civil fine, debarment, suspension or recall, in each case alleging any violation applicable to any Company Product or Company Product candidate by the Company or any of its Subsidiaries of any Applicable Law, except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(g) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, during the period beginning on January 1, 2017 and ending on the date hereof, neither the Company nor any of its Subsidiaries have voluntarily or involuntarily initiated, conducted or issued, or caused to be initiated, conducted or issued, any material recall, field corrections, market withdrawal or replacement, safety alert, warning, "dear doctor" letter, investigator notice, or other notice or action to wholesalers, distributors, retailers, healthcare professionals or patients relating to an alleged lack of safety, efficacy or regulatory compliance of any Company Product. To the knowledge of the Company, there are no facts as of the date hereof which are reasonably likely to cause, and neither the Company nor any of its Subsidiaries has received any written notice from the FDA or any other Company Regulatory Agency during the period beginning on January 1, 2017 and ending on the date hereof regarding, (i) the recall, market withdrawal or replacement of any Company Product sold or intended to be sold by the Company or its Subsidiaries (other than recalls, withdrawals or replacements that are not material to the Company and its Subsidiaries, taken as a whole), (ii) a material change in the marketing classification or a material change in the labeling of any such Company Products, (iii) a termination or suspension of the manufacturing, marketing, or distribution of such Company Products, or (iv) a material negative change in reimbursement status of a Company Product.

Section 4.16 Material Contracts .

(a) Section 4.16(a) of the Company Disclosure Schedule sets forth a list as of the date of this Agreement of each of the following Contracts (other than any Contract that is a Company Employee Plan) to which the Company or any of its Subsidiaries is a party or by which it is bound (each such Contract listed or required to be so listed, and each of the following Contracts to which the Company or any of its Subsidiaries becomes a party or by which it becomes bound after the date of this Agreement, a " Company Material Contract "):

(i) any Contract, including any manufacturing, supply or distribution agreement, that requires by its terms or is reasonably likely to require the payment or delivery of cash or other consideration by or to the Company or any of its Subsidiaries in an amount having an expected value in excess of $100,000,000 in the fiscal year ending December 31, 2018 or any fiscal year thereafter and which cannot be terminated by the Company or such Subsidiary on less than sixty (60) days' notice without material payment or penalty;

(ii) each Contract providing for or (in the case of subclause (B)) related to the acquisition or disposition of assets or securities by or from any Persons or any business (or any Contract providing for an option, right first refusal or offer or similar rights with respect to any of the foregoing) (including the Abraxis CVR Agreement) (A) entered into since December 31, 2015 that involved or would reasonably be expected to involve the payment of consideration in excess of $250,000,000 in the aggregate with respect to such Contract or series of related Contracts, or (B) that contains (or would contain, in the case of an option, right of first refusal or offer or similar rights) (x) ongoing representations, warranties, covenants, indemnities or other obligations (including "earn-out", contingent value rights or other contingent payment or value obligations) that would reasonably be expected to involve or may require the receipt or making of payments or the issuance of any Equity Securities of the Company or any of its Subsidiaries in excess of $250,000,000 in the fiscal year ending December 31, 2018 or any fiscal year thereafter or (y) any other material ongoing obligations of the Company or any of its Subsidiaries outside of the ordinary course of business;

(iii) any Contract with any Governmental Authority involving or that would reasonably be expected to involve payments to or from any Governmental Authority in an amount having an expected value in excess of $50,000,000 in the fiscal year ending December 31, 2018 or any fiscal year thereafter;

(iv) any Contract that (A) limits or purports to limit, in any material respect, the freedom of the Company or any of its Subsidiaries to engage or compete in any line of business or with any Person or in any area or that would so limit or purport to limit, in any material respect, the freedom of Parent or any of its Affiliates after the Merger Effective Time, (B) contains material exclusivity or "most favored nation" obligations or restrictions to which the Company or any of its Subsidiaries is subject (or, following the Closing, to which Parent or any of its Subsidiaries would be subject) or (C) contains any other provisions restricting or purporting to restrict the ability of the Company or any of its Subsidiaries to sell, market, distribute, promote, manufacture, develop, commercialize, or test or research any current product material to the Company or any of its Subsidiaries, directly or indirectly through third parties in any material respect, or that would so limit or purport to limit Parent or any of its Affiliates after the Merger Effective Time in any material respect;

(v) any Contract relating to third-party indebtedness for borrowed money (including under any short-term financing facility), in each case in excess of $35,000,000 (whether incurred, assumed, guaranteed or secured by any asset) of the Company or any of its Subsidiaries;

(vi) any Contract restricting the payment of dividends or the making of distributions to stockholders or the repurchase or redemptions of stock or other Equity Securities;

(vii) any collective bargaining agreements or other agreements with any labor organization, labor union or other employee representative with respect to employees of the Company or any of its Subsidiaries;

(viii) any material joint venture, profit-sharing, partnership, collaboration, co-promotion, commercialization, research, development or other similar agreement;

(ix) any Contract with any Person (A) pursuant to which the Company or its Subsidiaries may be required to pay milestones, royalties or other contingent payments based on any research, testing, development, regulatory filings or approval, sale, distribution, commercial manufacture or other similar occurrences, developments, activities or events, or (B) under which the Company or its Subsidiaries grants to any Person any right of first refusal, right of first negotiation, option to purchase, option to license, or any other similar rights with respect to any Company Product or any material Intellectual Property (or, following the Closing, with respect to any Parent Product or any material Intellectual Property of Parent or any of its Subsidiaries), in each case, which payments are in an amount having an expected value in excess of $250,000,000 in the fiscal year ending December 31, 2018 or any fiscal year thereafter;

(x) any lease or sublease for real or personal property for which annual rental payments made by the Company or any of its Subsidiaries are expected to be in excess of $50,000,000 in the fiscal year ending December 31, 2018 or any fiscal year thereafter;

(xi) all material Contracts pursuant to which the Company or any of its Subsidiaries (A) receives or is granted any license (including any sublicense) to, or covenant not to be sued under, any Intellectual Property (other than licenses to Software that is commercially available on non-discriminatory pricing terms) or (B) grants any license (including any sublicense) to, or covenant not to be sued under, any Intellectual Property (other than non-exclusive licenses granted in the ordinary course of business), in the case of each of clauses (A) and (B), other than any grant of a license in the ordinary course of business in connection with any distribution agreement (but, for clarity, excluding any distribution agreement that was entered into in connection with the settlement or compromise of any claim, action or proceeding or to avoid any actual or threatened claim, action or proceeding);

(xii) any Contracts or other transactions with any (A) executive officer or director of the Company, (B) record or, to the knowledge of the Company, beneficial owner of five percent (5%) or more of the voting securities of the Company, or (C) affiliate (as such term is defined in Rule 12b-2 promulgated under the 1934 Act) or "associates" (or members of any of their "immediate family") (as such terms are respectively defined in Rule 12b-2 and Rule 16a-1 of the 1934 Act) of any such executive officer, director or beneficial owner;

(xiii) any Contract involving the settlement or compromise of any claim, action or proceeding or threatened claim, action or proceeding (or series of related, claims actions or proceedings) which (A) involves either (1) payments by the Company or any of its Subsidiaries after the date hereof in excess of $100,000,000, and/or (2) any Covered Product in the United States or Europe, or (B) imposes any materially burdensome monitoring or reporting obligations to any other Person outside the ordinary course of business or any other material restrictions or liabilities on the Company or any Subsidiary of the Company (or, following the Closing, on Parent or any Subsidiary of Parent);

(xiv) [intentionally omitted]; and

(xv) any other Contract required to be filed by the Company pursuant to Item 601(b)(10) of Regulation S-K.

(b) All of the Company Material Contracts are, subject to the Bankruptcy and Equity Exceptions, (i) valid and binding obligations of the Company or a Subsidiary of the Company (as the case may be) and, to the knowledge of the Company, each of the other parties thereto, and (ii) in full force and effect and enforceable in accordance with their respective terms against the Company or its Subsidiaries (as the case may be) and, to the knowledge of the Company, each of the other parties thereto (in each case except for such Company Material Contracts that are terminated after the date of this Agreement in accordance with their respective terms, other than as a result of a default or breach by the Company or any of its Subsidiaries of any of the provisions thereof), except where the failure to be valid and binding obligations and in full force and effect and enforceable has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the knowledge of the Company, as of the date hereof, no Person is seeking to terminate or challenging the validity or enforceability of any Company Material Contract, except such terminations or challenges which have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries, nor, as of the date hereof and to the knowledge of the Company, any of the other parties thereto, has violated any provision of, or committed or failed to perform any act that (with or without notice, lapse of time or both) would constitute a default under any provision of, and, as of the date hereof, neither the Company nor any of its Subsidiaries has received written notice that it has violated or defaulted under, any Company Material Contract, except for those violations and defaults (or potential defaults) which have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Parent true and complete copies of each Company Material Contract as in effect as of the date hereof.

Section 4.17 Taxes . Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) All Tax Returns required by Applicable Law to be filed with any Taxing Authority by, or on behalf of, the Company or any of its Subsidiaries have been filed when due (giving effect to all extensions) in accordance with all Applicable Law, and all such Tax Returns are true and complete in all respects.

(b) The Company and each of its Subsidiaries has paid (or has had paid on its behalf) all Taxes shown as due and payable on any Tax Returns, or (i) where payment is not yet due, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate accrual or (ii) where payment is being contested in good faith pursuant to appropriate procedures, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate reserve, in each case for all Taxes through the end of the last period for which the Company and its Subsidiaries ordinarily record items on their respective books and records.

(c) The Company and each of its Subsidiaries has duly and timely withheld all Taxes required to be withheld, and such withheld Taxes have been either duly and timely paid to the proper Taxing Authority or properly set aside in accounts for such purpose.

(d) (i) All federal income Tax Returns of the affiliated group of which the Company is the common parent through the Tax year ended December 31, 2008 have been examined and closed or are Tax Returns with respect to which the applicable period for assessment under Applicable Law, after giving effect to extensions or waivers, has expired, and (ii) neither the Company nor any of its Subsidiaries (or any member of any affiliated, consolidated, combined or unitary group of which the Company or any of its Subsidiaries is or has been a member) has granted any extension or waiver of the limitation period applicable to the assessment or collection of any federal income Tax, and no power of attorney with respect to any such Taxes has been granted to any Person, in each case, that remains in effect.

(e) There is no claim, action, suit, proceeding or investigation (including an audit) pending or, to the Company's knowledge, threatened in writing against or with respect to the Company or its Subsidiaries in respect of any Tax or Tax asset.

(f) There are no requests for rulings or determinations in respect of any Tax or Tax asset pending between the Company or any of its Subsidiaries and any Taxing Authority.

(g) During the two (2)-year period ending on the date of this Agreement, the Company was not a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(h) There are no Liens for Taxes (other than Permitted Liens) upon any of the assets of the Company or any of its Subsidiaries.

(i) No claim has been made in writing by any Taxing Authority in a jurisdiction where the Company and/or the Company's Subsidiaries do not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to taxation by, or required to file any Tax Return in, that jurisdiction.

(j) Neither the Company nor any of its Subsidiaries (i) has been a member of an affiliated, consolidated, combined or unitary group other than one of which the Company or any of its Subsidiaries was the common parent, (ii) is party to any Tax Sharing Agreement (other than any such agreement solely between the Company and its Subsidiaries), (iii) has entered into a closing agreement pursuant to Section 7121 of the Code, or any predecessor provision or any similar provision of state, local or non-U.S. law or (iv) has any liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. law) or any Tax Sharing Agreement or as a transferee or successor.

(k) Neither the Company nor any of its Subsidiaries has engaged in any "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

Section 4.18 Employees and Employee Benefit Plans .

(a) Section 4.18(a) of the Company Disclosure Schedule sets forth a true and complete list as of the date of this Agreement of each material Company Employee Plan that covers employees of the Company and its Subsidiaries working in the United States (each, a " U.S. Company Employee Plan ") and each U.S. Company Employee Plan that is subject to ERISA. For each material U.S. Company Employee Plan and each U.S. Company Employee Plan that is subject to ERISA, the Company has made available to Parent a copy of such plan (or a description, if such plan is not written) and all amendments thereto and material written interpretations thereof, together with a copy of (if applicable) (i) each trust, insurance or other funding arrangement, (ii) each summary plan description and summary of material modifications, (iii) the most recently filed Internal Revenue Service Forms 5500, (iv) the most recent favorable determination or opinion letter from the Internal Revenue Service, (v) the most recently prepared actuarial reports and financial statements in connection with each such U.S. Company Employee Plan, and (vi) all documents and correspondence relating thereto received from or provided to the Department of Labor, the PBGC, the Internal Revenue Service or any other Governmental Authority during the past year.

(b) Neither the Company nor any of its ERISA Affiliates (nor any predecessor of any such entity) sponsors, maintains, administers or contributes to (or has any obligation to contribute to), or has, since January 1, 2017, sponsored, maintained, administered or contributed to (or had any obligation to contribute to), any plan subject to Title IV of ERISA, including any multiemployer plan, as defined in Section 3(37) of ERISA.

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each Company Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the Internal Revenue Service or has applied to the Internal Revenue Service for such a letter within the applicable remedial amendment period or such period has not expired and, to the knowledge of the Company, no circumstances exist that would reasonably be expected to result in any such letter being revoked or not being reissued or a penalty under the Internal Revenue Service Closing Agreement Program if discovered during an Internal Revenue Service audit or investigation. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each trust created under any such Company Employee Plan is exempt from tax under Section 501(a) of the Code and has been so exempt since its creation.

(d) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, since January 1, 2017, each Company Employee Plan has been maintained in compliance with its terms and all Applicable Law, including ERISA and the Code, and all contributions required to have been made by the Company or any of its Subsidiaries with respect to any benefit or compensation plan, program or other arrangement maintained by a Governmental Authority have been timely made. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, no claim (other than routine claims for benefits), action, suit, investigation or proceeding (including an audit) is pending against or involves or, to the Company's knowledge, is threatened against or reasonably expected to involve, any Company Employee Plan before any Governmental Authority, including the Internal Revenue Service, the Department of Labor or the PBGC. To the knowledge of the Company, since January 1, 2017, no events have occurred with respect to any Company Employee Plan that would reasonably be expected to result in the assessment of any excise taxes or penalties against the Company or any of its Subsidiaries, except for events that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(e) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, with respect to each director, officer, or employee (including each former director, officer, or employee) of the Company or any of its Subsidiaries, the consummation of the transactions contemplated by this Agreement will not, either alone or together with any other event: (i) entitle any such individual to any payment or benefit, including any bonus, retention, severance, retirement or job security payment or benefit, (ii) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, or increase the amount payable or trigger any other obligation under, any Company Employee Plan or (iii) contractually limit or restrict the right of the Company or any of its Subsidiaries or, after the Closing, Parent to merge, amend or terminate any material Company Employee Plan.

(f) Neither the Company nor any of its Subsidiaries has any material current or projected liability for, and no Company Employee Plan provides or promises, any material post-employment or post-retirement medical, dental, disability, hospitalization, life or similar benefits (whether insured or self-insured) to any director, officer, or employee (including any former director, officer, or employee) of the Company or any of its Subsidiaries (other than coverage mandated by Applicable Law).

(g) Neither the Company nor any of its Subsidiaries has any obligation to gross-up, indemnify or otherwise reimburse any Person for any Tax incurred by such Person under Section 409A or 4999 of the Code.

(h) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, with respect to any Company Employee Plan covered by Subtitle B, Part 4 of Title I of ERISA or Section 4975 of the Code, no non-exempt prohibited transaction has occurred that has caused or would reasonably be expected to cause the Company or any of its Subsidiaries to incur any liability under ERISA or the Code.

Section 4.19 Labor Matters .

(a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Applicable Laws relating to labor and employment, including those relating to labor management relations, wages, hours, overtime, employee classification, discrimination, sexual harassment, civil rights, affirmative action, work authorization, immigration, safety and health, information privacy and security, workers compensation, continuation coverage under group health plans, wage payment and the payment and withholding of taxes.

(b) Neither the Company nor any of its Subsidiaries is, or since January 1, 2017 has been, a party to or subject to, or is currently negotiating in connection with entering into, any collective bargaining agreement or any other similar agreement with respect to employees of the Company or any of its Subsidiaries with any labor organization, labor union or other employee representative, and, to the Company's knowledge, since January 1, 2017 through the date hereof, there has not been any organizational campaign, card solicitation, petition or other unionization or similar activity seeking recognition of a collective bargaining or similar unit relating to any director, officer or employee of the Company or any of its Subsidiaries. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) there are no unfair labor practice complaints pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries before the National Labor Relations Board or any other Governmental Authority or any current union representation questions involving any director, officer, or employee (including any former director, officer, or employee) of the Company or any of its Subsidiaries with respect to the Company or its Subsidiaries, and (ii) there is no labor strike, slowdown, stoppage, picketing, interruption of work or lockout pending or, to the Company's knowledge, threatened against or affecting the Company or any of its Subsidiaries.

Section 4.20 Intellectual Property .

(a) The Company has made available to Parent a true and complete list, as of the date of this Agreement, of all issued U.S. patents and registrations for U.S. trademarks and U.S. patent applications and applications for registration of U.S. trademarks, in each case, constituting Owned Intellectual Property included in the Company Intellectual Property, or that are included in the Company Intellectual Property and are exclusively in-licensed by the Company or any of its Subsidiaries, in each case, that are material to any Company Pipeline Products or are material to the current or currently planned commercialization of any other Covered Product (including the exercise of any Covered Rights with respect thereto) (the " Scheduled Covered Product IP "). Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) no Scheduled Covered Product IP has lapsed, expired, been abandoned or been adjudged invalid or unenforceable, and (ii) to the knowledge of the Company, all Company Registered IP is subsisting, and if registered, valid and enforceable.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and its Subsidiaries (A) are the sole and exclusive owners of all Owned Intellectual Property that is (1) Scheduled Covered Product IP, (2) a related U.S. or global issued or pending patent, or (3) material Company Intellectual Property that relates to any Covered Product; (B) either own, or have a valid and enforceable right to use all Company Intellectual Property that relates to any Company Product (other than a Covered Product) in any material respect; and (C) have the exclusive right to make, use, offer for sale, sell, import or otherwise commercialize the Covered Products, and, with respect to the foregoing clauses (A) through (C), hold all of their right, title and interest in and to all of the Company Intellectual Property free and clear of all Liens other than Permitted Liens, and (ii) to the knowledge of the Company, the Company's and its Subsidiaries' Owned Intellectual Property and the Company's and its Subsidiaries' Licensed Intellectual Property, together with any other Intellectual Property that the Company or any of its Subsidiaries is otherwise permitted to use (including by way of a release, covenant not to sue or immunity from suit), constitutes all of the Intellectual Property necessary to, or used or held for use in, the conduct of the respective businesses of the Company and its Subsidiaries as currently conducted and as currently planned to be conducted prior to Closing (including as may be necessary to exercise the Covered Rights with respect to any Covered Product).

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect (and except as disclosed by the Company to Parent during the course of Parent's due diligence prior to the date hereof), during the past four (4) years (i) to the knowledge of the Company, neither the Company nor any of its Subsidiaries nor the conduct of their respective businesses has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party (or will, to the knowledge of the Company, infringe, misappropriate or otherwise violate the Intellectual Property rights of any Third Party through the exercise prior to or after Closing of any Covered Rights with respect to any Covered Product), (ii) there is no claim, action, proceeding or suit or, to the knowledge of the Company, investigation pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries (A) alleging that the Company or any of its Subsidiaries has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party (including due to the exercise of any Covered Rights with respect to any Covered Products), or (B) based upon, or challenging or seeking to deny or restrict, the rights of the Company or any of its Subsidiaries in any of the Company Intellectual Property (including any challenges to the validity, enforceability, registerability, inventorship, ownership or use of any of the Company Intellectual Property that is Owned Intellectual Property), and (iii) to the knowledge of the Company, no Third Party has infringed, misappropriated, diluted or otherwise violated any of the Company Intellectual Property that is Owned Intellectual Property. Notwithstanding anything contained herein, the representations and warranties set forth herein shall be read without application of 35 U.S.C. §271(e)(1) (the statutory research exemption) and any similar Applicable Laws outside the U.S. to the same extent as if such Applicable Laws did not exist.

(d) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) since January 1, 2017, the Company and its Subsidiaries have provided reasonable notice of its privacy and personal data collection and use policies on its websites and other customer and public communications and the Company and its Subsidiaries have complied since January 1, 2017 with such policies and all Applicable Laws relating to (A) the privacy of the users of the Company's and its Subsidiaries' respective products, services and websites and (B) the collection, use, storage and disclosure of any personally-identifiable information (including personal health information), (ii) since January 1, 2017, there is no claim, action, proceeding or suit or, to the knowledge of the Company, investigation pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries alleging any violation of such policies or Applicable Laws, (iii) neither this Agreement nor the consummation of the transactions contemplated hereby will violate any such policy or Applicable Laws, and (iv) the Company and its Subsidiaries have taken commercially reasonable steps to protect the types of information referred to in this Section 4.20(d) against loss and unauthorized access, use, modification, disclosure or other misuse, and, to the knowledge of the Company, since January 1, 2017, there has been no unauthorized access, use, modification, disclosure or other misuse of such data or information.

(e) Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company's IT Assets operate in a manner that permits the Company and its Subsidiaries to conduct their respective businesses as currently conducted, (ii) the Company and its Subsidiaries take commercially reasonable actions to protect the confidentiality, integrity and security of the Company's IT Assets (and all data and other information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption, including the implementation of commercially reasonable data backup, disaster avoidance and recovery procedures and business continuity procedures, and (iii) since January 1, 2017, to the knowledge of the Company, there has been no unauthorized use or access or security breaches, or interruption, modification, loss or corruption of any of the Company's IT Assets (or any data or other information or transactions stored or contained therein or transmitted thereby).

Section 4.21 Properties . Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (a) the Company and each of its Subsidiaries has good, valid and marketable fee simple title to, or valid leasehold interests in, as the case may be, each parcel of real property of the Company or any of its Subsidiaries, free and clear of all Liens, except for Permitted Liens, (b) each lease, sublease or license (each, a " Lease ") under which the Company or any of its Subsidiaries leases, subleases or licenses any real property is, subject to the Bankruptcy and Equity Exceptions, a valid and binding obligation of the Company or a Subsidiary of the Company (as the case may be) and, to the knowledge of the Company, each of the other parties thereto, and in full force and effect and enforceable in accordance with its terms against the Company or its Subsidiaries (as the case may be) and, to the knowledge of the Company, each of the other parties thereto (except for such Leases that are terminated after the date of this Agreement in accordance with their respective terms, other than as a result of a default or breach by the Company or any of its Subsidiaries of any of the provisions thereof), (c) neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any of the other parties thereto has violated or committed or failed to perform any act which (with or without notice, lapse of time or both) would constitute a default under any provision of any Lease, and (d) neither the Company nor any of its Subsidiaries has received written notice that it has violated or defaulted under any Lease.

Section 4.22 Environmental Matters . Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) no notice, notification, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed, and no claim, action, proceeding or suit or, to the knowledge of the Company, investigation (including a review) is pending or, to the knowledge of the Company, threatened by any Governmental Authority or other Person relating to the Company or any of its Subsidiaries that relates to, or arises under, any Environmental Law, Environmental Permit or Hazardous Substance;

(b) the Company and its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Environmental Laws and all Environmental Permits and hold all applicable Environmental Permits; and

(c) there are no liabilities or obligations of the Company or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise arising under or relating to any Environmental Law, Environmental Permit or Hazardous Substance and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in any such liability or obligation.

Section 4.23 FCPA; Anti-Corruption; Sanctions .

(a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any director, manager, employee, agent or representative of the Company or any of its Subsidiaries, in each case acting on behalf of the Company or any of its Subsidiaries, has, in the last five (5) years, in connection with the business of the Company or any of its Subsidiaries, taken any action in violation of the FCPA or other applicable Bribery Legislation (in each case to the extent applicable).

(b) Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, manager or employee of the Company or any of its Subsidiaries, is, or in the last five (5) years has been, subject to any actual or pending or, to the knowledge of the Company, threatened civil, criminal, or administrative actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings, demand letters, settlements, or enforcement actions, or made any voluntary disclosures to any Governmental Authority, involving the Company or any of its Subsidiaries relating to applicable Bribery Legislation, including the FCPA.

(c) The Company and each of its Subsidiaries has made and kept books and records, accounts and other records, which, in reasonable detail, accurately and fairly reflect in all material respects the transactions and dispositions of the assets of the Company and each of its Subsidiaries as required by the FCPA.

(d) The Company and each of its Subsidiaries has instituted policies and procedures reasonably designed to ensure compliance in all material respects with the FCPA and other applicable Bribery Legislation and maintain such policies and procedures in force.

(e) To the knowledge of the Company, no officer, director, or employee of the Company or any of its Subsidiaries is a Government Official.

(f) Except as has had not and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, none of the Company or any of its Subsidiaries, nor, to the knowledge of the Company, any of their respective directors, managers or employees (i) is a Sanctioned Person, (ii) has, in the last five (5) years, engaged in, has any plan or commitment to engage in, direct or indirect dealings with any Sanctioned Person or in any Sanctioned Country on behalf of the Company or any of its Subsidiaries in violation of applicable Sanctions Law or (iii) has, in the last five (5) years, violated, or engaged in any conduct sanctionable under, any Sanctions Law, nor to the knowledge of the Company, been the subject of an investigation or allegation of such a violation or sanctionable conduct.

Section 4.24 Insurance . Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries maintain insurance coverage with reputable insurers in such amounts and covering such risks as the Company reasonably believes, based on past experience, is adequate for the businesses and operations of the Company and its Subsidiaries (taking into account the cost and availability of such insurance).

Section 4.25 Transactions with Affiliates . To the knowledge of the Company and as of the date of this Agreement, since January 1, 2017, there have been no transactions, or series of related transactions, agreements, arrangements or understandings in effect, nor are there any currently proposed transactions, or series of related transactions, agreements, arrangements or understandings, that would be required to be disclosed under Item 404(a) of Regulation S-K that have not been otherwise disclosed in the Company SEC Documents filed prior to the date hereof.

Section 4.26 Antitakeover Statutes . Assuming the representations and warranties set forth in Section 5.26 are true and correct, neither the restrictions set forth in Section 203 of the DGCL nor any other "control share acquisition," "fair price," "moratorium" or other antitakeover laws enacted under U.S. state or federal laws apply to this Agreement or any of the transactions contemplated hereby.

Section 4.27 Opinions of Financial Advisors . The Board of Directors of the Company has received the opinion of each of J.P. Morgan Securities LLC and Citigroup Global Markets Inc., financial advisors to the Company, each to the effect that, as of the date of such respective opinion and based upon and subject to the various assumptions, limitations, qualifications and other matters set forth therein, the Merger Consideration to be paid to the holders of Company Common Stock in the Merger pursuant to this Agreement is fair, from a financial point of view, to such holders. A written copy of each such opinion will be delivered promptly to Parent after the date hereof for informational purposes only.

Section 4.28 Finders' Fees . Except for J.P. Morgan Securities LLC and Citigroup Global Markets Inc., there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries (collectively, the " Company Bankers ") who might be entitled to any fee or commission from the Company or any of its Affiliates in connection with the transactions contemplated by this Agreement. Section 4.28 of the Company Disclosure Schedule sets forth the aggregate amount of fees and commissions that are or would be payable to each Company Banker in connection with the transactions contemplated by this Agreement.

Section 4.29 No Ownership of Parent Common Stock . Neither the Company nor any of its Subsidiaries beneficially owns, directly or indirectly, any shares of Parent Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Parent Common Stock, and neither the Company nor any of its Subsidiaries has any rights to acquire any shares of Parent Common Stock (other than any such securities owned by the Company or any of its Subsidiaries in a fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account). There are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of the capital stock or other Equity Securities of Parent or any of its Subsidiaries.

Section 4.30 No Other Company Representations and Warranties . Except for the representations and warranties made by the Company in this Article IV (as qualified by the applicable items disclosed in the Company Disclosure Schedule in accordance with Section 11.05 and the introduction to this Article IV), neither the Company nor any other Person makes or has made any representation or warranty, expressed or implied, at law or in equity, with respect to or on behalf of the Company or its Subsidiaries, their businesses, operations, assets, liabilities, financial condition, results of operations, future operating or financial results, estimates, projections, forecasts, plans or prospects (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans or prospects) or the accuracy or completeness of any information regarding the Company or its Subsidiaries or any other matter furnished or provided to Parent or made available to Parent in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, this Agreement or the transactions contemplated hereby. The Company and its Subsidiaries disclaim any other representations or warranties, whether made by the Company or any of its Subsidiaries or any of their respective Affiliates or Representatives. The Company acknowledges and agrees that, except for the representations and warranties made by Parent in Article V (as qualified by the applicable items disclosed in the Parent Disclosure Schedule in accordance with Section 11.05 and the introduction to Article V), neither Parent nor any other Person is making or has made any representations or warranty, expressed or implied, at law or in equity, with respect to or on behalf of Parent or its Subsidiaries, their businesses, operations, assets, liabilities, financial condition, results of operations, future operating or financial results, estimates, projections, forecasts, plans or prospects (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans or prospects) or the accuracy or completeness of any information regarding Parent or its Subsidiaries or any other matter furnished or provided to Parent or made available to the Company in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, this Agreement, or the transactions contemplated hereby or thereby. The Company specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that Parent and its Affiliates have specifically disclaimed and do hereby specifically disclaim any such other representations and warranties.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PARENT

Subject to Section 11.05 , except (i) as disclosed in any publicly available Parent SEC Document or (ii) as set forth in the Parent's Disclosure Schedule, Parent and Merger Sub jointly and severally represent and warrant to the Company that:

Section 5.01 Corporate Existence and Power . Parent is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Each of Parent and Merger Sub has all requisite corporate power and authority required to own or lease all of its properties or assets and to carry on its business as now conducted. Each of Parent and Merger Sub is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified or in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Parent directly owns all of the outstanding shares of capital stock of Merger Sub. Prior to the date of this Agreement, Parent has made available to the Company true and complete copies of the certificate of incorporation and bylaws of each of Parent and Merger Sub, in each case, as in effect on the date of this Agreement (the " Parent Organizational Documents "). Since the date of its incorporation, Merger Sub has not engaged in any activities other than (a) in connection with the preparation, negotiation and execution of this Agreement or the consummation of the transactions contemplated hereby or as expressly contemplated by this Agreement or (b) those incident or related to its incorporation.

Section 5.02 Corporate Authorization .

(a) The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and the consummation by Parent and Merger Sub of the transactions contemplated by this Agreement (including, in the case of Parent, the entry into the New CVR Agreement at or immediately prior to the Merger Effective Time) are within the corporate powers and authority of each of Parent and Merger Sub and, except for the Parent Stockholder Approval and the required approval of the stockholder of Merger Sub in connection with the transactions contemplated by this Agreement (including the Merger), have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub. The affirmative vote of at least a majority of the votes cast by holders of outstanding shares of Parent Common Stock at a duly called and held meeting of Parent's stockholders at which a quorum is present approving the issuance of shares of Parent Common Stock in connection with the Merger (the " Parent Share Issuance ") is the only vote of the holders of any of Parent's capital stock necessary in connection with the consummation of the Merger (the " Parent Stockholder Approval "). This Agreement has been duly executed and delivered by each of Parent and Merger Sub and (assuming due authorization, execution and delivery by the Company) constitutes a valid, legal and binding agreement of each of Parent and Merger Sub enforceable against Parent and Merger Sub in accordance with its terms (subject to the Bankruptcy and Equity Exceptions), and the New CVR Agreement will, at the time of its execution by Parent, be duly executed and delivered by Parent and constitute a valid, legal and binding agreement of Parent enforceable against Parent in accordance with its terms (subject to the Bankruptcy and Equity Exceptions).

(b) At a meeting duly called and held, the Board of Directors of Parent adopted resolutions (i) determining that this Agreement and the transactions contemplated hereby (including the Parent Share Issuance) are fair to and in the best interests of Parent and its stockholders, (ii) approving, adopting and declaring advisable this Agreement and the transactions contemplated hereby (including the Parent Share Issuance), (iii) directing that the approval of the Parent Share Issuance be submitted to a vote at a meeting of Parent's stockholders and (iv) recommending approval of the Parent Share Issuance by Parent's stockholders (such recommendation, the " Parent Board Recommendation "). Except as permitted by Section 7.02 , the Board of Directors of Parent has not subsequently rescinded, modified or withdrawn any of the foregoing resolutions.

(c) The Board of Directors of Merger Sub has unanimously adopted resolutions (i) determining that this Agreement and the transactions contemplated hereby (including the Merger) are fair to and in the best interests of Merger Sub and its stockholder, (ii) approving, adopting and declaring advisable this Agreement and the transactions contemplated hereby (including the Merger), (iii) directing that the approval and adoption of this Agreement be submitted to a vote of Merger Sub's stockholder and (iv) recommending approval and adoption of this Agreement by Merger Sub's stockholder.

Section 5.03 Governmental Authorization . The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and the consummation by each of Parent and Merger Sub of the transactions contemplated hereby require no action by or in respect of, Consents of, or Filings with, any Governmental Authority other than (a) the filing of the Certificate of Merger with the Delaware Secretary of State and appropriate documents with the relevant authorities of other states in which Parent or Merger Sub is qualified to do business, (b) compliance with any applicable requirements of the HSR Act, (c) compliance with and Filings under any applicable Foreign Antitrust Laws, (d) compliance with any applicable requirements of the 1933 Act, the 1934 Act and any other applicable U.S. state or federal securities laws or pursuant to the rules of the NYSE, (d) in the case of the New CVR Agreement and the transactions contemplated thereby, compliance with any requirements of the Trust Indenture Act of 1939 (the " Trust Indenture Act ") and (e) any other actions, Consents or Filings the absence of which has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.04 Non-contravention . The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and the consummation of the transactions contemplated hereby do not and will not (a) contravene, conflict with, or result in any violation or breach of any provision of the Parent Organizational Documents, (b) assuming compliance with the matters referred to in Section 5.03 and receipt of the Parent Stockholder Approval, contravene, conflict with or result in any violation or breach of any provision of any Applicable Law, (c) assuming compliance with the matters referred to in Section 5.03 and receipt of the Parent Stockholder Approval, require any Consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which Parent or any of its Subsidiaries is entitled under, any provision of any Parent Permit or any Contract binding upon Parent or any of its Subsidiaries, or (d) result in the creation or imposition of any Lien on any asset of Parent or any of its Subsidiaries, except, in the case of each of clauses (b) through (d), as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.05 Capitalization .

(a) The authorized capital stock of Parent consists of (i) 4,500,000,000 shares of Parent Common Stock, (ii) 10,000,000 shares of preferred stock, par value $1.00 per share (" Parent Preferred Stock ") and (iii) 1,300,188 shares of $2 Convertible Preferred Stock, par value $1.00 per share (" Parent Convertible Preferred Stock "). As of December 31, 2018, there were outstanding (A) 1,632,464,617.509 shares of Parent Common Stock, (B) no shares of Parent Preferred Stock, (C) 3,605 shares of Parent Convertible Preferred Stock, (D) options to purchase shares of Parent Common Stock (" Parent Stock Options ") with respect to an aggregate of 1,666,999 shares of Parent Common Stock, (E) 4,993,334 restricted stock units under Parent's equity compensation plans (" Parent Restricted Stock Units "), (F) 1,475,713 market share units under Parent's employee stock benefit plan (" Market Based Units "), determined assuming target performance levels were assumed, and (G) 2,819,421 performance share units under Parent's employee stock benefit plan (" Performance Share Units "), determined assuming target performance levels were achieved (together with Parent Stock Options, Parent Restricted Stock Units, Market Based Units, Performance Share Units and any other equity or equity-linked awards granted after December 31, 2018, " Parent Equity Awards "). The shares of Parent Common Stock to be issued as part of the Merger Consideration have been duly authorized and, when issued and delivered in accordance with the terms of this Agreement, will have been validly issued and will be fully paid and nonassessable and the issuance thereof will be free of preemptive rights. Parent owns all of the issued and outstanding capital stock of Merger Sub. Except as set forth in this Section 5.05(a) and for changes since December 31, 2018 resulting from (x) the exercise or vesting and settlement of Parent Equity Awards outstanding on such date or issued on or after such date to the extent permitted by Section 6.01 , or (y) the issuance of Equity Securities of Parent on or after the date hereof to the extent permitted by Section 6.01 , there are no issued, reserved for issuance or outstanding Equity Securities of Parent.

(b) All outstanding shares of capital stock of Parent have been, and all shares that may be issued pursuant to any employee stock option or other compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights. No Subsidiary of Parent owns any shares of capital stock of Parent (other than any such shares owned by Subsidiaries of Parent in a fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account). There are no outstanding bonds, debentures, notes or other indebtedness of Parent having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of Parent have the right to vote. There are no outstanding obligations of Parent or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Equity Securities of Parent. Neither Parent nor any of its Subsidiaries is a party to any agreement with respect to the voting of any Equity Securities of Parent.

Section 5.06 Subsidiaries .

(a) Each Major Subsidiary of Parent is a corporation or other entity duly incorporated or organized, validly existing and in good standing (except to the extent such concept is not applicable under Applicable Law of such Subsidiary's jurisdiction of incorporation, formation or organization, as applicable) under the laws of its jurisdiction of incorporation, formation or organization, as applicable, and has all corporate or other organizational powers and authority, as applicable, required to own, lease and operate its properties and assets and to carry on its business as now conducted, except for those jurisdictions where failure to be so organized, validly existing and in good standing or to have such power or authority has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Each such Major Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified or in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) All of the issued and outstanding capital stock or other Equity Securities of each Subsidiary of Parent have been validly issued and are fully paid and nonassessable (except to the extent such concepts are not applicable under Applicable Law of such Subsidiary's jurisdiction of incorporation, formation or organization, as applicable) and are owned by Parent, directly or indirectly, free and clear of any Lien (other than any restrictions imposed by Applicable Law) and free of preemptive rights, rights of first refusal, subscription rights or similar rights of any Person and transfer restrictions (other than transfer restrictions under Applicable Law or under the organizational documents of such Subsidiary). There are no outstanding obligations of Parent or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Equity Securities of any Subsidiary of Parent. Except for the capital stock or other Equity Securities of its Subsidiaries and publicly traded securities held for investment which do not exceed five percent (5%) of the outstanding securities of any entity, Parent does not own, directly or indirectly, any capital stock or other Equity Securities of any Person.

Section 5.07 SEC Filings and the Sarbanes-Oxley Act .

(a) Parent has timely filed with or furnished to the SEC all reports, schedules, forms, statements, prospectuses, registration statements and other documents required to be filed with or furnished to the SEC by Parent since January 1, 2017 (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the " Parent SEC Documents "). No Subsidiary of Parent is required to file any report, schedule, form, statement, prospectus, registration statement or other document with the SEC.

(b) As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), the Parent SEC Documents filed or furnished prior to the date of this Agreement complied, and each Parent SEC Document filed or furnished subsequent to the date of this Agreement (assuming, in the case of each of the Registration Statement and the Joint Proxy Statement/Prospectus, that the representation and warranty set forth in Section 4.09 is true and correct) will comply, in all material respects with the applicable requirements of the NYSE, the 1933 Act, the 1934 Act and the Sarbanes-Oxley Act, as the case may be.

(c) As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), each Parent SEC Document filed or furnished prior to the date of this Agreement did not, and each Parent SEC Document filed or furnished subsequent to the date of this Agreement (assuming, in the case of each of the Registration Statement and the Joint Proxy Statement/Prospectus, that the representation and warranty set forth in Section 4.09 is true and correct) will not, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(d) Parent is, and since January 1, 2017 has been, in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of the NYSE.

(e) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, Parent and its Subsidiaries have established and maintain disclosure controls and procedures (as defined in Rule 13a-15 under the 1934 Act) designed to ensure that material information relating to Parent, including its consolidated Subsidiaries, is made known to Parent's principal executive officer and its principal financial officer by others within those entities, including during the periods in which the periodic reports required under the 1934 Act are being prepared.

(f) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, Parent and its Subsidiaries have established and maintain a system of internal controls designed to provide reasonable assurance regarding the reliability of Parent's financial reporting and the preparation of Parent's financial statements for external purposes in accordance with GAAP, and Parent's principal executive officer and principal financial officer have disclosed, based on their most recent evaluation of such internal controls prior to the date of this Agreement, to Parent's auditors and the audit committee of the Board of Directors of Parent (i) all significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect Parent's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls. Parent has made available to the Company prior to the date of this Agreement a true and complete (in all material respects) summary of any disclosure of the type described in the preceding sentence made by management to Parent's auditors and audit committee during the period beginning January 1, 2017 and ending as of the date hereof.

(g) Since January 1, 2017, each of the principal executive officer and principal financial officer of Parent (or each former principal executive officer and principal financial officer of Parent, as applicable) has made all certifications required by Rules 13a-14 and 15d-14 under the 1934 Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC and the NYSE, and the statements contained in any such certifications are true and complete in all material respects as of the date on which they were made.

Section 5.08 Financial Statements and Financial Matters .

(a) The audited consolidated financial statements and unaudited consolidated interim financial statements of Parent included or incorporated by reference in the Parent SEC Documents present fairly in all material respects, in conformity with GAAP applied on a consistent basis during the periods presented (except as may be indicated in the notes thereto), the consolidated financial position of Parent and its Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal and recurring year-end audit adjustments in the case of any unaudited interim financial statements). Such consolidated financial statements have been prepared in all material respects from the books and records of Parent and its Subsidiaries.

(b) From January 1, 2017 to the date of this Agreement, Parent has not received written notice from the SEC or any other Governmental Authority indicating that any of its accounting policies or practices are or may be the subject of any review, inquiry, investigation or challenge by the SEC or any other Governmental Authority.

Section 5.09 Disclosure Documents . The information relating to Parent and its Subsidiaries that is provided by Parent, any of its Subsidiaries or any of their respective Representatives for inclusion or incorporation by reference in the Registration Statement or the Joint Proxy Statement/Prospectus will not (a) in the case of the Registration Statement, at the time the Registration Statement or any amendment or supplement thereto becomes effective and at the time of the Company Stockholder Meeting and the Parent Stockholder Meeting, and (b) in the case of the Joint Proxy Statement/Prospectus, at the time the Joint Proxy Statement/Prospectus or any amendment or supplement thereto is first mailed to the stockholders of the Company and the stockholders of Parent and at the time of the Company Stockholder Meeting and the Parent Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing provisions of this Section 5.09 , no representation or warranty is made by Parent with respect to information or statements made or incorporated by reference in the Registration Statement or the Joint Proxy Statement/Prospectus which were not supplied by or on behalf of the Parent or Merger Sub.

Section 5.10 Absence of Certain Changes .

(a) (i) Since the Parent Balance Sheet Date through the date of this Agreement, except in connection with or related to the process in connection with which Parent and its Representatives discussed and negotiated this Agreement and the transactions contemplated hereby, the business of Parent and its Subsidiaries has been conducted in all material respects in the ordinary course of business consistent with past practice and (ii) since the Parent Balance Sheet Date, there has not been any event, change, effect, development or occurrence that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Since the Parent Balance Sheet Date through the date of this Agreement, there has not been any action taken by Parent or any of its Subsidiaries that, if taken during the period from the date of this Agreement through the Merger Effective Time without the Company's consent, would constitute a breach of clause (b) or (e) of Section 7.01 (or, solely with respect to the foregoing clauses, clause (f) of Section 7.01).

Section 5.11 No Undisclosed Material Liabilities . There are no liabilities or obligations of Parent or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, that would be required by GAAP to be reflected on the consolidated balance sheet of Parent and its Subsidiaries, other than (a) liabilities or obligations disclosed and provided for in the Parent Balance Sheet or in the notes thereto, (b) liabilities or obligations incurred in the ordinary course of business consistent with past practice since the Parent Balance Sheet Date, (c) liabilities arising in connection with the transactions contemplated hereby, or (d) other liabilities or obligations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There are no off-balance sheet arrangements of any type pursuant to any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K that have not been so described in the Parent SEC Documents.

Section 5.12 Litigation . There is no claim, action, proceeding or suit or, to the knowledge of the Parent, investigation pending or, to the knowledge of Parent, threatened (in the case of clause (b) below, as of the date hereof) against Parent, any of its Subsidiaries, any present or former officers, directors or employees of Parent or any of its Subsidiaries in their respective capacities as such, or any of the respective properties or assets of Parent or any of its Subsidiaries, before (or, in the case of threatened claims, actions, suits, investigations or proceedings, that would be before) any Governmental Authority (a) that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect or (b) that, as of the date of this Agreement, in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Merger or any of the other transactions contemplated hereby. There is no Order outstanding against Parent, any of its Subsidiaries, any present or former officers, directors or employees of Parent or any of its Subsidiaries in their respective capacities as such or any of the respective properties or assets of any of Parent or any of its Subsidiaries, that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect or that, as of the date of this Agreement, would reasonably be expected to prevent, enjoin, alter or materially delay the Merger or any of the other transactions contemplated hereby.

Section 5.13 Permits . Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, Parent and each of its Subsidiaries hold all governmental licenses and Consents necessary for the operation of its respective businesses (the " Parent Permits "). Parent and each of its Subsidiaries are, and since January 1, 2017 have been, in compliance with the terms of the Parent Permits, except for failures to comply that have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There is no claim, action, proceeding or suit or, to the knowledge of Parent, investigation pending, or, to the knowledge of Parent, threatened that seeks, or, to the knowledge of Parent, any existing condition, situation or set of circumstances that would reasonably be expected to result in, the revocation, cancellation, termination, non-renewal or adverse modification of any Parent Permit, except where such revocation, cancellation, termination, non-renewal or adverse modification has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.14 Compliance with Laws . Parent and each of its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Applicable Laws, except for failures to comply that have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.15 Regulatory Matters .

(a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) each of Parent and its Subsidiaries holds (A) all authorizations under the FDCA, the PHSA, and the regulations of the FDA promulgated thereunder, and (B) authorizations of any applicable Governmental Authority that are concerned with the quality, identity, strength, purity, safety, efficacy, manufacturing, marketing, distribution, sale, pricing, import or export of any of the Parent Products (any such Governmental Authority, a " Parent Regulatory Agency ") necessary for the lawful operating of the businesses of Parent or any of its Subsidiaries as currently conducted (the " Parent Regulatory Permits "); (ii) all such Parent Regulatory Permits are valid and in full force and effect; and (iii) Parent and its Subsidiaries are in compliance with the terms of all Parent Regulatory Permits. All Parent Regulatory Permits are in full force and effect, except where the failure to be in full force and effect has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Neither Parent nor any of its Subsidiaries are party to any material corporate integrity agreements, monitoring agreements, consent decrees, settlement orders, or similar agreements with or imposed by any Parent Regulatory Agency.

(c) All pre-clinical and clinical investigations in respect of a Parent Product or Parent Product candidate conducted or sponsored by Parent or any of its Subsidiaries are being and, since January 1, 2017 have been, conducted in compliance with all Applicable Laws administered or issued by the applicable Parent Regulatory Agencies, including (i) FDA standards for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical trials contained in Title 21 parts 50, 54, 56, 312, 314 and 320 of the Code of Federal Regulations and (ii) any applicable federal, state and provincial Applicable Laws restricting the collection, use and disclosure of individually identifiable health information and personal information, except, in each case, for such noncompliance that has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(d) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, during the period beginning on January 1, 2017 and ending on the date hereof, neither Parent nor any of its Subsidiaries has received any written notice from the FDA or the EMA or any foreign agency with jurisdiction over the development, marketing, labeling, sale, use handling and control, safety, efficacy, reliability, or manufacturing of the Parent Products which would reasonably be expected to lead to the denial, limitation, revocation, or rescission of any of the Parent Regulatory Permits or of any application for marketing approval currently pending before the FDA or such other Parent Regulatory Agency.

(e) During the period beginning on January 1, 2017 and ending on the date hereof, all reports, documents, claims, permits and notices required to be filed, maintained or furnished to the FDA or any other Parent Regulatory Agency by Parent and its Subsidiaries have been so filed, maintained or furnished, except where failure to file, maintain or furnish such reports, documents, claims, permits or notices have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. All such reports, documents, claims, permits and notices were true and complete in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing). Since January 1, 2017, neither Parent nor any of its Subsidiaries, nor, to the knowledge of Parent, any officer, employee, agent or distributor of Parent or any of its Subsidiaries, has made an untrue statement of a material fact or a fraudulent statement to the FDA or any other Parent Regulatory Agency, failed to disclose a material fact required to be disclosed to the FDA or any other Parent Regulatory Agency, or committed an act, made a statement, or failed to make a statement, in each such case, related to the business of Parent or any of its Subsidiaries, that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for the FDA or any other Parent Regulatory Agency to invoke any similar policy, except for any act or statement or failure to make a statement that has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, since January 1, 2017, (i) neither Parent nor any of its Subsidiaries, nor, to the knowledge of Parent, any officer, employee, agent or distributor of Parent or any of its Subsidiaries, has been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar Applicable Law or authorized by 21 U.S.C. § 335a(b) or any similar Applicable Law applicable in other jurisdictions in which material quantities of any of the Parent Products or Parent Product candidates are sold or intended by Parent to be sold; and (ii) neither Parent nor any of its Subsidiaries, nor, to the knowledge of the Parent, any officer, employee, agent or distributor of Parent or any of its Subsidiaries, has been excluded from participation in any federal health care program or convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal health care program under Section 1128 of the Social Security Act of 1935, as amended, or any similar Applicable Law or program.

(f) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, as to each Parent Product or Parent Product candidate subject to the FDCA and the regulations of the FDA promulgated thereunder or any similar Applicable Law in any foreign jurisdiction in which material quantities of any of the Parent Products or Parent Product candidates are sold or intended by Parent or any of its Subsidiaries to be sold that is or has been developed, manufactured, tested, distributed or marketed by or on behalf of Parent or any of its Subsidiaries, each such Parent Product or Parent Product candidate is being or has been developed, manufactured, stored, distributed and marketed in compliance with all Applicable Laws, including those relating to investigational use, marketing approval, current good manufacturing practices, packaging, labeling, advertising, record keeping, reporting, and security. There is no action or proceeding pending or, to the knowledge of Parent, threatened, including any prosecution, injunction, seizure, civil fine, debarment, suspension or recall, in each case alleging any violation applicable to any Parent Product or Parent Product candidate by Parent or any of its Subsidiaries of any Applicable Law, except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(g) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, during the period beginning on January 1, 2017 and ending on the date hereof, neither Parent nor any of its Subsidiaries have voluntarily or involuntarily initiated, conducted or issued, or caused to be initiated, conducted or issued, any material recall, field corrections, market withdrawal or replacement, safety alert, warning, "dear doctor" letter, investigator notice, or other notice or action to wholesalers, distributors, retailers, healthcare professionals or patients relating to an alleged lack of safety, efficacy or regulatory compliance of any Parent Product. To the knowledge of Parent, there are no facts as of the date hereof which are reasonably likely to cause, and neither Parent nor any of its Subsidiaries has received any written notice from the FDA or any other Parent Regulatory Agency during the period beginning on January 1, 2017 and ending on the date hereof regarding (i) the recall, market withdrawal or replacement of any Parent Product sold or intended to be sold by Parent or its Subsidiaries (other than recalls, withdrawals or replacements that are not material to Parent and its Subsidiaries, taken as a whole), (ii) a material change in the marketing classification or a material change in the labeling of any such Parent Products, (iii) a termination or suspension of the manufacturing, marketing, or distribution of such Parent Products, or (iv) a material negative change in reimbursement status of a Parent Product.

Section 5.16 Taxes . Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect:

(a) All Tax Returns required by Applicable Law to be filed with any Taxing Authority by, or on behalf of, Parent or any of its Subsidiaries have been filed when due (giving effect to all extensions) in accordance with all Applicable Law, and all such Tax Returns are true and complete in all respects.

(b) Parent and each of its Subsidiaries has paid (or has had paid on its behalf) all Taxes shown as due and payable on any Tax Returns, or (i) where payment is not yet due, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate accrual or (ii) where payment is being contested in good faith pursuant to appropriate procedures, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate reserve, in each case for all Taxes through the end of the last period for which Parent and its Subsidiaries ordinarily record items on their respective books and records.

(c) Parent and each of its Subsidiaries has duly and timely withheld all Taxes required to be withheld, and such withheld Taxes have been either duly and timely paid to the proper Taxing Authority or properly set aside in accounts for such purpose.

(d) (i) All federal income Tax Returns of the affiliated group of which Parent is the common parent through the Tax year ended December 31, 2007 have been examined and closed or are Tax Returns with respect to which the applicable period for assessment under Applicable Law, after giving effect to extensions or waivers, has expired, and (ii) neither Parent nor any of its Subsidiaries (or any member of any affiliated, consolidated, combined or unitary group of which Parent or any of its Subsidiaries is or has been a member) has granted any extension or waiver of the limitation period applicable to the assessment or collection of any federal income Tax, and no power of attorney with respect to any such Taxes has been granted to any Person, in each case, that remains in effect.

(e) There is no claim, action, suit, proceeding or investigation (including an audit) pending or, to Parent's knowledge, threatened in writing against or with respect to Parent or its Subsidiaries in respect of any Tax or Tax asset.

(f) There are no requests for rulings or determinations in respect of any Tax or Tax asset pending between Parent or any of its Subsidiaries and any Taxing Authority.

(g) During the two (2) year period ending on the date of this Agreement, Parent was not a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(h) There are no Liens for Taxes (other than Permitted Liens) upon any of the assets of Parent or any of its Subsidiaries.

(i) No claim has been made in writing by any Taxing Authority in a jurisdiction where Parent and/or Parent's Subsidiaries do not file Tax Returns that Parent or any of its Subsidiaries is or may be subject to taxation by, or required to file any Tax Return in, that jurisdiction.

(j) Neither Parent nor any of its Subsidiaries (i) has been a member of an affiliated, consolidated, combined or unitary group other than one of which Parent or any of its Subsidiaries was the common parent, (ii) is party to any Tax Sharing Agreement (other than any such agreement solely between Parent and its Subsidiaries), (iii) has entered into a closing agreement pursuant to Section 7121 of the Code, or any predecessor provision or any similar provision of state, local or non-U.S. law or (iv) has any liability for the Taxes of any Person (other than Parent or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. law) or any Tax Sharing Agreement or as a transferee or successor.

(k) Neither Parent nor any of its Subsidiaries has engaged in any "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

Section 5.17 Employees and Employee Benefit Plans .

(a) Neither Parent nor any of its ERISA Affiliates (nor any predecessor of any such entity) sponsors, maintains, administers or contributes to (or has any obligation to contribute to), or has, since January 1, 2017, sponsored, maintained, administered or contributed to (or had any obligation to contribute to), any plan subject to Title IV of ERISA, including any multiemployer plan, as defined in Section 3(37) of ERISA.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, each Parent Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the Internal Revenue Service or has applied to the Internal Revenue Service for such a letter within the applicable remedial amendment period or such period has not expired and, to the knowledge of Parent, no circumstances exist that would reasonably be expected to result in any such letter being revoked or not being reissued or a penalty under the Internal Revenue Service Closing Agreement Program if discovered during an Internal Revenue Service audit or investigation. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, each trust created under any such Parent Employee Plan is exempt from tax under Section 501(a) of the Code and has been so exempt since its creation.

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, since January 1, 2017, each Parent Employee Plan has been maintained in compliance with its terms and all Applicable Law, including ERISA and the Code and all contributions required to have been made by Parent or any of its Subsidiaries with respect to any benefit or compensation plan, program or other arrangement maintained by a Governmental Authority have been timely made. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, no claim (other than routine claims for benefits), action, suit, investigation or proceeding (including an audit) is pending against or involves or, to Parent's knowledge, is threatened against or reasonably expected to involve, any Parent Employee Plan before any Governmental Authority, including the Internal Revenue Service, the Department of Labor or the PBGC. To the knowledge of Parent, since January 1, 2017, no events have occurred with respect to any Parent Employee Plan that would reasonably be expected to result in the assessment of any excise taxes or penalties against Parent or any of its Subsidiaries, except for events that have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(d) Neither Parent nor any of its Subsidiaries has any material current or projected liability for, and no Parent Employee Plan provides or promises, any material post-employment or post-retirement medical, dental, disability, hospitalization, life or similar benefits (whether insured or self-insured) to any director, officer, or employee (including any former director, officer, or employee) of Parent or any of its Subsidiaries (other than coverage mandated by Applicable Law).

(e) Neither Parent nor any of its Subsidiaries has any obligation to gross-up, indemnify or otherwise reimburse any Person for any Tax incurred by such Person under Section 409A or 4999 of the Code.

(f) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, with respect to any Parent Employee Plan covered by Subtitle B, Part 4 of Title I of ERISA or Section 4975 of the Code, no non-exempt prohibited transaction has occurred that has caused or would reasonably be expected to cause Parent or any of its Subsidiaries to incur any liability under ERISA or the Code.

Section 5.18 Labor Matters .

(a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, Parent and its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Applicable Laws relating to labor and employment, including those relating to labor management relations, wages, hours, overtime, employee classification, discrimination, sexual harassment, civil rights, affirmative action, work authorization, immigration, safety and health, information privacy and security, workers compensation, continuation coverage under group health plans, wage payment and the payment and withholding of taxes.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, as of the date hereof (i) there are no unfair labor practice complaints pending or, to Parent's knowledge, threatened against Parent or any of its Subsidiaries before the National Labor Relations Board or any other Governmental Authority or any current union representation questions involving any director, officer, or employee (including any former director, officer, or employee) of Parent or any of its Subsidiaries with respect to Parent or its Subsidiaries, and (ii) there is no labor strike, slowdown, stoppage, picketing, interruption of work or lockout pending or, to Parent's knowledge, threatened against or affecting Parent or any of its Subsidiaries.

Section 5.19 Intellectual Property .

(a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, none of the registrations (including patents, trademarks and copyrights, and material domain name registrations) and applications for registration for Owned Intellectual Property included in the Parent Intellectual Property (the " Parent Registered IP ") that is an issued U.S. patent or a registration for a U.S. trademark or a U.S. patent application or an application for registration of a U.S. trademark has lapsed, expired, been abandoned or been adjudged invalid or unenforceable, and, to the knowledge of Parent, all Parent Registered IP is subsisting, and if registered, valid and enforceable.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) Parent and its Subsidiaries are the sole and exclusive owners of all Owned Intellectual Property included in the Parent Intellectual Property that is (A) an issued U.S. patent or a registration for a U.S. trademark or a U.S. patent application or an application for registration of a U.S. trademark and any U.S. or global issued or pending patents relating thereto, or (B) material Parent Intellectual Property that relates to any material Parent Product, and, with respect to the foregoing clauses (A) and (B), hold all of their right, title and interest in and to all of the Parent Intellectual Property free and clear of all Liens other than Permitted Liens, and (ii) to the knowledge of Parent, Parent's and its Subsidiaries' Owned Intellectual Property and Parent's and its Subsidiaries' Licensed Intellectual Property, together with any other Intellectual Property that Parent or any of its Subsidiaries is otherwise permitted to use (including by way of a release, covenant not to sue or immunity from suit), constitutes all of the Intellectual Property necessary to, or used or held for use in, the conduct of the respective businesses of Parent and its Subsidiaries as currently conducted, and as currently planned to be conducted prior to Closing.

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect (and except as disclosed by Parent to the Company during the course of Company's due diligence prior to the date hereof), during the past four (4) years (i) to the knowledge of Parent, neither Parent nor any of its Subsidiaries nor the conduct of their respective businesses has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party, (ii) there is no claim, action, proceeding or suit or, to the knowledge of Parent, investigation pending or, to the knowledge of Parent, threatened against or affecting Parent or any of its Subsidiaries (A) alleging that Parent or any of its Subsidiaries has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party or (B) based upon, or challenging or seeking to deny or restrict, the rights of Parent or any of its Subsidiaries in any of Parent Intellectual Property (including any challenges to the validity, enforceability, registerability, inventorship, ownership or use of any of the Parent Intellectual Property that is Owned Intellectual Property), and (iii) to the knowledge of Parent, no Third Party has infringed, misappropriated, diluted or otherwise violated any of the Parent Company Intellectual Property that is Owned Intellectual Property. Notwithstanding anything contained herein, the representations and warranties set forth herein shall be read without application of 35 U.S.C. §271(e)(1) (the statutory research exemption) and any similar Applicable Laws outside the U.S. to the same extent as if such Applicable Laws did not exist.

(d) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) since January 1, 2017, Parent and its Subsidiaries have provided reasonable notice of its privacy and personal data collection and use policies on its websites and other customer and public communications and Parent and its Subsidiaries have complied since January 1, 2017 with such policies and all Applicable Laws relating to (A) the privacy of the users of Parent's and its Subsidiaries' respective products, services and websites and (B) the collection, use, storage and disclosure of any personally-identifiable information (including personal health information), (ii) since January 1, 2017, there is no claim, action, proceeding or suit or, to the knowledge of Parent, investigation pending or, to the knowledge of Parent, threatened against Parent or any of its Subsidiaries alleging any violation of such policies or Applicable Laws, (iii) neither this Agreement nor the consummation of the transactions contemplated hereby will violate any such policy or Applicable Laws, and (iv) Parent and its Subsidiaries have taken commercially reasonable steps to protect the types of information referred to in this Section 5.19(d) against loss and unauthorized access, use, modification, disclosure or other misuse, and, to the knowledge of Parent, since January 1, 2017, there has been no unauthorized access, use, modification, disclosure or other misuse of such data or information.

(e) Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) Parent's IT Assets operate in a manner that permits Parent and its Subsidiaries to conduct their respective businesses as currently conducted, (ii) Parent and its Subsidiaries take commercially reasonable actions to protect the confidentiality, integrity and security of Parent's IT Assets (and all data and other information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption, including the implementation of commercially reasonable data backup, disaster avoidance and recovery procedures and business continuity procedures, and (iii) since January 1, 2017, to the knowledge of Parent, there has been no unauthorized use or access or security breaches, or interruption, modification, loss or corruption of any of Parent's IT Assets (or any data or other information or transactions stored or contained therein or transmitted thereby).

Section 5.20 Environmental Matters . Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect:

(a) no notice, notification, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed, and no claim, action proceeding or suit or, to the knowledge of Parent, investigation (including a review) is pending or, to the knowledge of Parent, threatened by any Governmental Authority or other Person relating to Parent or any of its Subsidiaries that relates to, or arises under, any Environmental Law, Environmental Permit or Hazardous Substance;

(b) Parent and its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Environmental Laws and all Environmental Permits and hold all applicable Environmental Permits; and

(c) there are no liabilities or obligations of Parent or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise arising under or relating to any Environmental Law, Environmental Permit or Hazardous Substance and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in any such liability or obligation.

Section 5.21 FCPA; Anti-Corruption; Sanctions .

(a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, neither Parent nor any of its Subsidiaries, nor, to the knowledge of Parent, any director, manager, employee, agent or representative of Parent or any of its Subsidiaries, in each case acting on behalf of Parent or any of its Subsidiaries, has, in the last five (5) years, in connection with the business of Parent or any of its Subsidiaries, taken any action in violation of the FCPA or other applicable Bribery Legislation (in each case to the extent applicable).

(b) Neither Parent nor any of its Subsidiaries nor, to the knowledge of Parent, any director, manager or employee of Parent or any of its Subsidiaries, is, or in the last five (5) years has been, subject to any actual or pending or, to the knowledge of Parent, threatened civil, criminal, or administrative actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings, demand letters, settlements, or enforcement actions, or made any voluntary disclosures to any Governmental Authority, involving Parent or any of its Subsidiaries relating to applicable Bribery Legislation, including the FCPA.

(c) Parent and each of its Subsidiaries has made and kept books and records, accounts and other records, which, in reasonable detail, accurately and fairly reflect in all material respects the transactions and dispositions of the assets of Parent and each of its Subsidiaries as required by the FCPA.

(d) Parent and each of its Subsidiaries has instituted policies and procedures reasonably designed to ensure compliance in all material respects with the FCPA and other applicable Bribery Legislation and maintain such policies and procedures in force.

(e) To the knowledge of Parent, no officer, director, or employee of Parent or any of its Subsidiaries is a Government Official.

(f) Except as has had not and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, none of Parent or any of its Subsidiaries, nor, to the knowledge of Parent, any of their respective directors, managers or employees (i) is a Sanctioned Person, (ii) has, in the last five (5) years, engaged in, has any plan or commitment to engage in, direct or indirect dealings with any Sanctioned Person or in any Sanctioned Country on behalf of the Parent or any of its Subsidiaries in violation of applicable Sanctions Law or (iii) has, in the last five (5) years, violated, or engaged in any conduct sanctionable under, any Sanctions Law, nor to the knowledge of Parent, been the subject of an investigation or allegation of such a violation or sanctionable conduct.

Section 5.22 Transactions with Affiliates

(a) . To the knowledge of Parent and as of the date of this Agreement, since January 1, 2017, there have been no transactions, or series of related transactions, agreements, arrangements or understandings in effect, nor are there any currently proposed transactions, or series of related transactions, agreements, arrangements or understandings, that would be required to be disclosed under Item 404(a) of Regulation S-K that have not been otherwise disclosed in the Parent SEC Documents filed prior to the date hereof.

Section 5.23 Antitakeover Statutes . Assuming the representations and warranties set forth in Section 4.29 are true and correct, neither the restrictions set forth in Section 203 of the DGCL nor any other "control share acquisition," "fair price," "moratorium" or other antitakeover laws enacted under U.S. state or federal laws apply to this Agreement or any of the transactions contemplated hereby.

Section 5.24 Opinions of Financial Advisors . The Board of Directors of Parent has received separate opinions of each of Morgan Stanley & Co. LLC, Dyal Co. LLC and Evercore Group L.L.C., financial advisors to Parent, to the effect that, as of the date of such opinions and subject to the various assumptions, procedures, matters, qualifications and limitations on the scope of the review undertaken as set forth therein, the Merger Consideration to be paid by Parent pursuant to this Agreement is fair, from a financial point of view, to Parent. A written copy of such opinions will be delivered promptly to the Company after the date hereof for informational purposes only.

Section 5.25 Finders' Fees . Except for Morgan Stanley & Co. LLC, Dyal Co. LLC and Evercore Group L.L.C., there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Parent or any of its Subsidiaries who might be entitled to any fee or commission from Parent or any of its Affiliates in connection with the transactions contemplated by this Agreement.

Section 5.26 No Ownership of Company Common Stock . Neither Parent nor any of its Subsidiaries beneficially owns, directly or indirectly, any shares of Company Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Company Common Stock, and neither Parent nor any of its Subsidiaries has any rights to acquire any shares of Company Common Stock (other than any such securities owned by Parent or any of its Subsidiaries in a fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account). There are no voting trusts or other agreements or understandings to which Parent or any of its Subsidiaries is a party with respect to the voting of the capital stock or other Equity Securities of the Company or any of its Subsidiaries.

Section 5.27 Financing .

(a) Parent has delivered to the Company (i) a true and complete copy of a fully executed commitment letter, dated as of the date hereof, among Parent and the Financing Sources party thereto (including all exhibits, schedules, and annexes to such letters in effect as of the date hereof), pursuant to which the Financing Sources have committed, upon the terms and subject to the conditions set forth therein, to provide the debt financing described therein in connection with the transactions contemplated hereby and (ii) a true and complete copy of the fully executed fee letter referenced therein (together, the " Debt Commitment Letter ") relating to fees with respect to the Debt Financing (redacted to remove only fee amounts, the rates and amounts included in the "market flex" provisions and certain other economic terms (none of which could adversely affect the amounts, availability, timing or conditionality of the Debt Financing)). The Debt Commitment Letter and any other debt commitment letter (including any replacement of the Debt Commitment Letter and related fee letter in connection with any Alternative Financing) executed in accordance with Section 7.06 , as replaced, amended, supplemented, modified or waived in accordance with Section 7.06 , including all exhibits, schedules, and annexes to such letters, are hereinafter referred to together as the " Debt Commitment Letters ". The financing contemplated pursuant to the Debt Commitment Letters is hereinafter referred to as the " Debt Financing ".

(b) As of the date of this Agreement, the Debt Commitment Letter is in full force and effect and is a legal, valid and binding obligation of Parent, and to the knowledge of Parent, the other parties thereto, and enforceable in accordance with its terms against Parent, and to the knowledge of Parent, each of the other parties thereto, in each case, subject to the Bankruptcy and Equity Exceptions. All commitment fees required to be paid under the Debt Commitment Letters have been paid in full by Parent or will be duly paid in full by Parent as and when due, and Parent has otherwise satisfied all of the other items and conditions required to be satisfied by Parent, and within its control, pursuant to the terms of the Debt Commitment Letter on or prior to the date of this Agreement. The Debt Commitment Letter has not been amended, restated, modified or terminated, nor has compliance with any term thereof been waived, on or prior to the date of this Agreement and the respective commitments contained in the Debt Commitment Letter have not been withdrawn, rescinded or otherwise modified in any respect on or prior to the date of this Agreement. As of the date of this Agreement, (i) no event has occurred which, with or without notice, lapse of time or both, would reasonably be expected to constitute a breach or default, in each case, on the part of Parent or, to the knowledge of Parent, any other party, under the Debt Commitment Letter and (ii) assuming the accuracy of the Company's representations and warranties contained in Article IV and compliance by the Company with its covenants contained in Article VI and Article VIII , in each case, in all material respects, Parent has no knowledge that any of the conditions to the Debt Financing will not be satisfied on the Closing Date or that the Debt Financing or any other funds necessary for the satisfaction of all of Parent's and its Subsidiaries' obligations under this Agreement will not be available to Parent on the Closing Date. The consummation of the Debt Financing is subject to no conditions precedent other than those expressly set forth in the copy of the Debt Commitment Letter delivered to the Company, and there are no contingencies that would permit the Financing Sources to reduce the total amount of the Debt Financing other than those expressly set forth in the copy of the Debt Commitment Letter delivered to the Company on or prior to the date hereof. Except for any engagement letters or related fee letters related to the permanent financing referred to in the Debt Commitment Letters, as of the date of this Agreement, there are no side letters or other agreements, Contracts or arrangements to which Parent or Merger Sub or any of their respective Affiliates are a party related to the funding of the Debt Financing. Assuming (A) the funding of the full amount of the Debt Financing in accordance with and subject to the satisfaction of the conditions of the Debt Commitment Letter and (B) the accuracy in all material respects of the Company's representations and warranties set forth in Article IV of this Agreement and compliance in all material respects by the Company with its covenants, agreements and obligations under Article VI and Article VIII of this Agreement, the aggregate proceeds of the Debt Financing, together with cash or cash equivalents held by Parent and the other sources of funds referenced in the Debt Commitment Letters, as of the Merger Effective Time, will be sufficient to enable Parent to pay in cash all amounts required to be paid by Parent and Merger Sub in cash on the Closing Date, including the Cash Consideration, and all payments, fees and expenses payable by them related to or arising out of the consummation of the transactions contemplated by this Agreement that are required to be paid as of such date. The obligations of Parent and Merger Sub hereunder are not conditioned in any manner upon Parent or Merger Sub obtaining any financing.

Section 5.28 No Other Parent Representations and Warranties . Except for the representations and warranties made by Parent in this Article V (as qualified by the applicable items disclosed in the Parent Disclosure Schedule in accordance with Section 11.05 and the introduction to this Article V), neither Parent nor any other Person (including Merger Sub) makes or has made any representation or warranty, expressed or implied, at law or in equity, with respect to or on behalf of Parent or its Subsidiaries, their businesses, operations, assets, liabilities, financial condition, results of operations, future operating or financial results, estimates, projections, forecasts, plans or prospects (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans or prospects) or the accuracy or completeness of any information regarding Parent or its Subsidiaries or any other matter furnished or provided to the Company or made available to the Company in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, this Agreement or the transactions contemplated hereby. Parent and its Subsidiaries disclaim any other representations or warranties, whether made by Parent or any of its Subsidiaries or any of their respective Affiliates or Representatives. Each of Parent and Merger Sub acknowledges and agrees that, except for the representations and warranties made by the Company in Article IV (as qualified by the applicable items disclosed in the Company Disclosure Schedule in accordance with Section 11.05 and the introduction to Article IV), neither the Company nor any other Person is making or has made any representations or warranty, expressed or implied, at law or in equity, with respect to or on behalf of the Company or its Subsidiaries, their businesses, operations, assets, liabilities, financial condition, results of operations, future operating or financial results, estimates, projections, forecasts, plans or prospects (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans or prospects) or the accuracy or completeness of any information regarding the Company or its Subsidiaries or any other matter furnished or provided to Parent or made available to Parent in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, this Agreement, or the transactions contemplated hereby or thereby. Each of Parent and Merger Sub specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that the Company and its Affiliates have specifically disclaimed and do hereby specifically disclaim any such other representations and warranties.

ARTICLE VI

COVENANTS OF THE COMPANY

The Company agrees that:

Section 6.01 Conduct of the Company . From the date of this Agreement until the earlier of the Merger Effective Time and the termination of this Agreement, except (x) as prohibited or required by Applicable Law, (y) as set forth in Section 6.01 of the Company Disclosure Schedule, or (z) as otherwise required or expressly contemplated by this Agreement, unless Parent shall otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), the Company shall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to conduct its business in all material respects in the ordinary course of business consistent with past practice and to preserve intact its business organization and relationships with customers, members, suppliers, licensors, licensees and other Third Parties and keep available the services of its present officers and employees; provided that (i) no action by the Company or any of its Subsidiaries to the extent expressly permitted by an exception to any of Section 6.01(a) through Section 6.01(o) will be a breach of this sentence and (ii) if the Company or any of its Subsidiaries seeks the consent of Parent to take any action prohibited by any of Section 6.01(a) through Section 6.01(o) , and such consent is withheld by Parent, the failure to take such action will not be deemed to be a breach of this sentence. Without limiting the generality of the foregoing, except (A) as prohibited or required by Applicable Law, (B) as set forth in Section 6.01 of the Company Disclosure Schedule, or (C) as otherwise required or expressly contemplated by this Agreement, without Parent's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), the Company shall not, and shall cause each of its Subsidiaries not to:

(a) adopt or propose any change to its certificate of incorporation, bylaws or other organizational documents (whether by merger, consolidation or otherwise) (including the Company Organizational Documents);

(b) (i) merge or consolidate with any other Person, (ii) acquire (including by merger, consolidation, or acquisition of stock or assets) any interest in any corporation, partnership, other business organization or any division thereof or any assets, securities or property, other than (A) acquisitions of assets, securities or property in an amount not to exceed $500,000,000 individually or $1,000,000,000 in the aggregate for all such acquisitions (measured for each acquisition on a risk adjusted net present value basis as of the closing of such acquisition), (B) acquisitions of securities under the Company's investment portfolio consistent with the Company's investment policy in effect as of the date hereof, (C) transactions (1) solely among the Company and one or more of its wholly owned Subsidiaries or (2) solely among the Company's wholly owned Subsidiaries and (D) acquisitions of inventory or equipment in the ordinary course of business consistent with past practice (provided that any of the acquisitions or transactions described in clauses (A) through (D) shall require the prior written consent of Parent if such acquisition or transaction would, individually or in the aggregate, reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by this Agreement), or (iii) adopt a plan of complete or partial liquidation, dissolution, recapitalization or restructuring;

(c) (i) split, combine or reclassify any shares of its capital stock (other than transactions (1) solely among the Company and one or more of its wholly owned Subsidiaries or (2) solely among the Company's wholly owned Subsidiaries), (ii) amend any term or alter any rights of any of its outstanding Equity Securities, (iii) declare, set aside or pay any dividend or make any other distribution (whether in cash, stock, property or any combination thereof) in respect of any shares of its capital stock or other Equity Securities, other than dividends or distributions by a Subsidiary of the Company to the Company or a wholly owned Subsidiary of the Company, or (iv) redeem, repurchase, cancel or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any of its Equity Securities or any Equity Securities of any Subsidiary of the Company, other than repurchases of shares of Company Common Stock in connection with the exercise of Company Stock Options or the vesting or settlement of Company RSU Awards, Company PSU Awards, or Company RSAs (including in satisfaction of any amounts required to be deducted or withheld under Applicable Law), in each case outstanding as of the date of this Agreement in accordance with the present terms of such Company Equity Awards or granted after the date of this Agreement to the extent permitted by this Agreement;

(d) issue, deliver or sell, or authorize the issuance, delivery or sale of, any shares of its capital stock or any other Equity Securities, other than (i) the issuance of any shares of Company Common Stock upon the exercise of Company Stock Options or the vesting or settlement of shares of Company RSU Awards or Company PSU Awards that are, in each case outstanding as of the date of this Agreement in accordance with the present terms of such Company Equity Awards or granted after the date of this Agreement to the extent permitted by this Agreement, or (ii) with respect to capital stock or Equity Securities of any Subsidiary of the Company, in connection with transactions (A) solely among the Company and one or more of its wholly owned Subsidiaries or (B) solely among the Company's wholly owned Subsidiaries;

(e) authorize, make or incur any capital expenditures or obligations or liabilities in connection therewith, other than (A) any capital expenditures contemplated by the capital expenditure budget of the Company and its Subsidiaries made available to Parent prior to the date hereof and (B) additional capital expenditures of less than $5,000,000 individually or $40,000,000 in the aggregate;

(f) sell, lease, license, transfer or otherwise dispose of any Subsidiary or any division thereof or of the Company or any assets, securities or property (in each case, other than Intellectual Property, which is the subject of Section 6.01(g)), other than (i) dispositions of securities under the Company's investment portfolio consistent with the Company's investment policy in effect as of the date hereof, (ii) sales or dispositions of inventory or tangible personal property (including equipment), in each case in the ordinary course of business consistent with past practice or (iii) transactions (A) solely among the Company and one or more of its wholly owned Subsidiaries or (B) solely among the Company's wholly owned Subsidiaries;

(g) sell, assign, license (including sublicense), abandon, allow to lapse, transfer or otherwise dispose of, or create or incur any Lien (other than a Permitted Lien) on, any Owned Intellectual Property or, to the extent it is material to any Covered Product or the exercise of the Covered Rights with respect thereto, Licensed Intellectual Property, in each case other than (i) in the ordinary course of business, consistent with past practice (A) pursuant to a non-exclusive license (but excluding any non-exclusive license with respect to any Covered Product), or (B) for the purpose of abandoning or allowing to lapse any Company Registered IP (x) that is immaterial, (y) during the ordinary course of prosecution, or (z) in any country with annual Company Product revenue that is less than $20 million, or (ii) pursuant to any Company Permitted Settlement;

(h) (i) make any material loans, advances or capital contributions to, or investments in, any other Person, other than (A) loans, advances, capital contributions or investments (1) by the Company to or in, as applicable, one or more of its wholly owned Subsidiaries or (2) by any Subsidiary of the Company to or in, as applicable, the Company or any wholly owned Subsidiary of the Company, or (B) capital contributions required under the terms of Contracts in effect as of the date hereof, or (ii) incur, assume, guarantee or repurchase or otherwise become liable for any indebtedness for borrowed money, issue or sell any debt securities or any options, warrants or other rights to acquire debt securities or enter into, guarantee or otherwise become liable for any interest rate, swap, currency, commodity or other similar hedging arrangement (in each case, whether, directly or indirectly, on a contingent basis or otherwise), other than (A) additional borrowings under the Credit Agreement (as in effect as of the date hereof) in accordance with the terms thereof and indebtedness under commercial paper arrangements backstopped thereby, provided that (I) the aggregate amount of commercial paper outstanding shall not at any time exceed $750,000,000 and (II) as of the last day of each fiscal quarter of the Company and as of the Closing Date, the amount of such commercial paper outstanding shall be $0, (B) intercompany indebtedness among the Company and its wholly-owned Subsidiaries or among the Company's wholly-owned Subsidiaries, (C) indebtedness for borrowed money incurred to replace, renew, extend, refinance or refund any existing indebtedness of the Company or any of its Subsidiaries, which indebtedness is (I) on terms that are substantially consistent with those contained in the indebtedness being replaced, renewed, extended, refinanced or refunded (other than the extension of the maturity date thereof) and (II) not in a principal amount greater than such indebtedness being replaced, renewed, extended, refinanced or refunded or, in the case of any "revolving" credit facility, the aggregate amount that may be incurred under the credit agreement governing such indebtedness being replaced, renewed, extended, refinanced or refunded (as in effect as of the date hereof), (D) guarantees of indebtedness of the Company or its wholly-owned Subsidiaries outstanding on the date hereof or otherwise incurred in compliance with this Section 6.01(h)(ii) , (E) in respect of interest rate, swap, currency, commodity or other similar hedging arrangements which (I) are entered into in connection with the restructuring or replacement of up to $500,000,000 in aggregate notional amount of existing hedging arrangements expiring in 2019 into forward contracts, (II) are entered into in connection with the restructuring or replacement of up to $750,000,000 in aggregate notional amount of existing hedging arrangements expiring in 2020 into forward contracts, or (III) are entered into in the ordinary course of business consistent with past practice in an aggregate notional amount not to exceed $250,000,000 at any time outstanding, and (F) other indebtedness not to exceed $50,000,000 in the aggregate at any time outstanding pursuant to this subclause (F);

(i) (i) enter into any Company Material Contract (including by amendment of any Contract that is not a Company Material Contract such that such Contract becomes a Company Material Contract), other than in the ordinary course of business consistent with past practice (except that no Company Material Contract of the type described in clause (iv), (vii), (viii), (ix), (xi), (xii) or (xiii) of Section 4.16(a) shall be entered into (unless it is entered into as part of a Company Permitted Settlement in accordance with Section 6.01(n))), or (ii) terminate, renew, extend or in any material respect modify or amend any Company Material Contract, other than in the ordinary course of business (except that no Company Material Contract of the type described in clause (iv), (vii), (viii), (ix), (xi), (xii) or (xiii) of Section 4.16(a) shall be terminated, renewed or extended or in any material respect modified or waived (unless it is entered into as part of a Company Permitted Settlement in accordance with Section 6.01(n))), or waive, release or assign any material right or claim thereunder;

(j) voluntarily terminate, suspend, abrogate, amend or modify any material Company Permit in a manner materially adverse to the Company and its Subsidiaries, taken as a whole;

(k) except as required by Applicable Law or Company Employee Plans as in effect as of the date hereof, (i) grant any change in control, severance or termination pay to (or amend any existing arrangement with) any of their respective directors, officers or employees (including former directors, officers or employees), (ii) enter into any employment, deferred compensation or other similar agreement (or any amendment to any such existing agreement) with any of their respective current or former director, officers or employees, other than offer letters (and related compensation arrangements set forth in such offer letters) with any newly hired directors or employees of the Company who are not considered to be executive officers (as defined in the 1934 Act) and who are not members of the executive leadership team that are entered into in the ordinary course of business consistent with past practice, (iii) establish, adopt or amend any Company Employee Plan or labor agreement, other than in the ordinary course of business consistent with past practice or any immaterial amendment that would not increase the cost to the Company or any of its Subsidiaries of maintaining such Company Employee Plan, or (iv) increase the compensation, bonus opportunity or other benefits payable to any of their respective directors, officers or employees (including former directors, officers or employees);

(l) make any material change in any method of financial accounting or financial accounting principles or practices, except for any such change required by reason of (or, in the reasonable good-faith judgment of the Company, advisable under) a change in GAAP or Regulation S-X under the 1934 Act (" Regulation S-X "), as approved by its independent public accountants;

(m) (i) make, change or revoke any material Tax election; (ii) change any annual Tax accounting period; (iii) adopt or change any material method of Tax accounting; (iv) enter into any material closing agreement with respect to Taxes; (v) settle or surrender or otherwise concede, terminate or resolve any material Tax claim, audit, investigation or assessment; or (vi) file or amend any U.S. federal or other material income Tax Return;

(n) settle or compromise any claim, action, suit, investigation or proceeding involving or against the Company or any of its Subsidiaries (including any action, suit, investigation, or proceeding involving or against any employee, officer or director of the Company or any of its Subsidiaries in their capacities as such), other than any Company Permitted Settlement; or

(o) agree, commit or propose to do any of the foregoing.

Section 6.02 No Solicitation by the Company .

(a) From the date of this Agreement until the earlier of the Merger Effective Time and the termination of this Agreement, except as otherwise set forth in this Section 6.02 , the Company shall not, and shall cause its Subsidiaries and its and its Subsidiaries' directors and officers to not, and shall use its reasonable best efforts to cause its and its Subsidiaries' other Representatives to not, directly or indirectly, (i) solicit, initiate or take any action to knowingly facilitate or knowingly encourage (including by way of furnishing information) the submission of any Company Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to the Company or any of its Subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of its Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, knowingly facilitate or knowingly encourage any effort by, any Third Party that the Company knows is seeking to make, or has made, a Company Acquisition Proposal, (iii) (A) withdraw or qualify, amend or modify in any manner adverse to Parent, the Company Board Recommendation, (B) fail to include the Company Board Recommendation in the Joint Proxy Statement/Prospectus or (C) recommend, adopt or approve or publicly propose to recommend, adopt or approve any Company Acquisition Proposal (any of the foregoing in this clause (iii), a " Company Adverse Recommendation Change "), or (iv) take any action to make any "moratorium", "control share acquisition", "fair price", "supermajority", "affiliate transactions" or "business combination statute or regulation" or other similar anti-takeover laws and regulations of the State of Delaware, including Section 203 of the DGCL, inapplicable to any Third Party or any Company Acquisition Proposal.

(b) Notwithstanding the foregoing, if at any time prior to the receipt of the Company Stockholder Approval (the " Company Approval Time ") (and in no event after the Company Approval Time), the Board of Directors of the Company receives a *bona fide* written Company Acquisition Proposal made after the date hereof which has not resulted from a violation of this Section 6.02 , the Board of Directors of the Company, directly or indirectly through its Representatives, may (x) contact the Third Party that has made such Company Acquisition Proposal in order to ascertain facts or clarify terms for the sole purpose of the Board of Directors of the Company informing itself about such Company Acquisition Proposal and such Third Party and (y) subject to compliance with this Section 6.02(b) , Section 6.02(c) and Section 6.02(e) , (i) engage in negotiations or discussions with any Third Party that, subject to the Company's compliance with Section 6.02(a) , has made after the date of this Agreement a Company Superior Proposal or an unsolicited *bona fide* written Company Acquisition Proposal that the Board of Directors of the Company determines in good faith, after consultation with its financial advisor and outside legal counsel, is or could reasonably be expected to lead to a Company Superior Proposal, (ii) furnish to such Third Party and its Representatives and financing sources nonpublic information relating to the Company or any of its Subsidiaries pursuant to a confidentiality agreement with confidentiality and use provisions no less favorable and other provisions no less favorable in the aggregate, in each case, to the Company than those contained in the Confidentiality Agreement, a copy of which shall be provided, promptly after its execution, to Parent for informational purposes; provided that all such non-public information (to the extent that such information has not been previously provided or made available to Parent) is provided or made available to Parent, as the case may be, substantially concurrently with the time it is provided or made available to such Third Party, and (iii) following receipt of a Company Superior Proposal after the date of this Agreement, (A) make a Company Adverse Recommendation Change and/or (B) terminate this Agreement in accordance with Section 10.01(d)(iii) to enter into a definitive agreement providing for such Company Superior Proposal, but in the case of this clause (iii) only if the Board of Directors of the Company determines in good faith, after consultation with the Company's outside legal counsel and financial advisor, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law. Nothing contained herein shall prevent the Board of Directors of the Company from (x) complying with Rule 14e-2(a) under the 1934 Act with regard to a Company Acquisition Proposal, so long as any action taken or statement made to so comply is consistent with this Section 6.02, or (y) making any required disclosure to the stockholders of the Company if the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with Applicable Law; provided that any Company Adverse Recommendation Change involving or relating to a Company Acquisition Proposal may only be made in accordance with the provisions of this Section 6.02(b) , Section 6.02(c) and Section 6.02(e) . A "stop, look and listen" disclosure or similar communication of the type contemplated by Rule 14d-9(f) under the 1934 Act shall not be a Company Adverse Recommendation Change.

(c) In addition to the requirements set forth in Section 6.02(b) , the Board of Directors of the Company shall not take any of the actions referred to in clauses (i) through (iii) of Section 6.02(b) unless the Company shall have first delivered to Parent written notice advising Parent that the Company intends to take such action. The Company shall notify Parent as promptly as practicable (but in no event later than forty eight (48) hours) after receipt by the Company (or any of its Representatives) of any Company Acquisition Proposal or any request for information relating to the Company or any of its Subsidiaries or for access to the business, properties, assets, books or records of the Company or any of its Subsidiaries by any Third Party that, to the knowledge of the Company, is reasonably likely to make or has made any Company Acquisition Proposal, which notice shall be provided in writing and shall identify the Third Party making, and the material terms and conditions of, any such Company Acquisition Proposal or request. The Company shall thereafter (x) keep Parent reasonably informed, on a reasonably current basis, of any material changes in the status and details of any such Company Acquisition Proposal or request and (y) as promptly as practicable (but in no event later than twenty four (24) hours after receipt) provide to Parent copies of all material correspondence and written materials sent or provided to the Company or any of its Subsidiaries that describes any terms or conditions of any Company Acquisition Proposal (as well as written summaries of any material oral communications relating to the terms and conditions of any Company Acquisition Proposal).

(d) Notwithstanding anything in this Agreement to the contrary, at any time prior to the Company Approval Time (and in no event after the Company Approval Time), the Board of Directors of the Company may effect a Company Adverse Recommendation Change involving or relating to a Company Intervening Event if the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law; provided that (i) the Company shall first notify Parent in writing of its intention to take such action, which notice shall include a reasonably detailed description of such Company Intervening Event, (ii) if requested by Parent, the Company and its Representatives shall discuss and negotiate in good faith with Parent and its Representatives (to the extent that Parent desires to so negotiate) during the four (4) Business Day period following such notice regarding any proposal by Parent to amend the terms of this Agreement in response to such Company Intervening Event, and (iii) the Board of Directors of the Company shall not effect any Company Adverse Recommendation Change involving or relating to a Company Intervening Event unless, after the four (4) Business Day period described in the foregoing clause (ii), the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel and taking into account any proposal by Parent to amend the terms of this Agreement during such four (4) Business Day period, that the failure to take such action would continue to be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law.

(e) Without limiting or affecting Section 6.02(a) , Section 6.02(b) or Section 6.02(c) , the Board of Directors of the Company shall not make a Company Adverse Recommendation Change involving or relating to a Company Superior Proposal or terminate this Agreement to enter into a definitive agreement with respect to a Company Superior Proposal unless (i) the Company first notifies Parent, in writing at least four (4) Business Days before taking such action, that the Company intends to take such action, which notice attaches the most current version of each proposed Contract or other agreement providing for such Company Superior Proposal and the identity of the Third Party(ies) making the Company Superior Proposal, (ii) if requested by Parent, during such four (4) Business Day period, the Company and its Representatives have discussed and negotiated in good faith with Parent (to the extent that Parent desires to so negotiate) regarding any proposal by Parent to amend the terms of this Agreement in response to such Company Superior Proposal and (iii) after such four (4) Business Day period, the Board of Directors of the Company determines in good faith, after consultation with its financial advisor and outside legal counsel and taking into account any proposal by Parent to amend the terms of this Agreement, that such Company Acquisition Proposal continues to constitute a Company Superior Proposal and that the failure to take such action would continue to be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law (it being understood and agreed that in the event of any amendment to the financial terms or other material terms of any such Company Superior Proposal, a new written notification from the Company consistent with that described in clause (i) of this Section 6.02(e) shall be required, and a new notice period under clause (i) of this Section 6.02(e) shall commence, during which notice period the Company shall be required to comply with the requirements of this Section 6.02(e) anew, except that such new notice period shall be for two (2) Business Days (as opposed to four (4) Business Days)). After delivery of such written notice pursuant to the immediately preceding sentence, the Company shall keep Parent reasonably informed on a reasonably current basis of all material developments affecting the material terms of any such Company Superior Proposal (and the Company shall provide Parent with copies of any additional written materials received that provide for or that are material to such Company Superior Proposal).

(f) " Company Superior Proposal " means any *bona fide* , written Company Acquisition Proposal (other than a Company Acquisition Proposal which has resulted from a violation of this Section 6.02) (with all references to "twenty percent (20%)" in the definition of Company Acquisition Proposal being deemed to be references to "fifty percent (50%)") on terms that the Board of Directors of the Company determines in good faith, after consultation with its financial advisor and outside legal counsel, and taking into account all the terms and conditions of the Company Acquisition Proposal that the Board of Directors of the Company considers to be appropriate (including the identity of the Person making the Company Acquisition Proposal and the expected timing and likelihood of consummation, any governmental or other approval requirements (including divestitures and entry into other commitments and limitations), break-up fees, expense reimbursement provisions, conditions to consummation and the availability of necessary financing (including, if a cash transaction (in whole or in part), the availability of such funds and the nature, terms and conditionality of any committed financing), would result in a transaction (i) that, if consummated, is more favorable to the Company's stockholders from a financial point of view than the Merger (taking into account any proposal by Parent to amend the terms of this Agreement), and (ii) that is reasonably capable of being completed on the terms proposed, taking into account the identity of the Person making the Company Acquisition Proposal, any approval requirements and all other financial, regulatory, legal and other aspects of such Company Acquisition Proposal.

(g) " Company Intervening Event " means any material event, fact, change, effect, development or occurrence that (i) was not known, or the material consequences of which were not known, in each case to the Board of Directors of the Company as of or prior to the date of this Agreement and (ii) does not relate to or involve any Company Acquisition Proposal.

(h) The Company shall, and shall cause its Subsidiaries and its and its Subsidiaries' directors and officers to, and shall use its reasonable best efforts to cause its and its Subsidiaries' other Representatives to, cease immediately and cause to be terminated 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 Company Acquisition Proposal or with respect to any indication, proposal or inquiry that could reasonably be expected to lead to a Company Acquisition Proposal and shall use its reasonable best efforts to cause any such party (and any of its Representatives) in possession of confidential information about the Company or any of its Subsidiaries that was furnished by or on behalf of the Company to return or destroy all such information.

Section 6.03 Financing Assistance .

(a) Prior to the Closing, the Company shall, and shall cause its Subsidiaries to, use its and their commercially reasonable efforts to provide such customary cooperation as may be reasonably requested by Parent in writing to assist Parent in arranging, obtaining or syndicating the Debt Financing (which term shall include, for purposes of this Section 6.03 , any of the permanent financing referred to in the Debt Commitment Letters) (provided that such requested cooperation does not unreasonably interfere with the ongoing business or operations of the Company and its Subsidiaries), including using commercially reasonable efforts to:

(i) reasonably cooperate with the marketing efforts or due diligence efforts of Parent or the Financing Sources, in each case, in connection with the Debt Financing, including using commercially reasonable efforts to cause members of management with appropriate seniority and expertise to participate in a reasonable number of meetings, due diligence sessions, rating agency sessions and road shows, at times and at locations reasonably acceptable to the Company and upon reasonable notice;

(ii) reasonably assist Parent in preparing customary offering memoranda, rating agency presentations, lender and investor presentations, confidential information memoranda, private placement memoranda, prospectuses and other similar documents for the Debt Financing, and as promptly as practicable provide historical financial and other customary information relating to the Company to Parent and the Financing Sources to the extent reasonably requested by Parent, including delivering and consenting to the inclusion or incorporation in any SEC filing related to the Debt Financing or the Alternative Financing of (A) audited consolidated balance sheets and related audited consolidated statements of income, comprehensive income, stockholders' equity and cash flows of the Company for each of the three fiscal years most recently ended more than sixty (60) days prior to the Closing Date (and audit reports for such financial statements shall not be subject to any "going concern" qualifications), (B) unaudited consolidated balance sheets and related unaudited consolidated statements of income, comprehensive income and cash flows of the Company for each subsequent fiscal quarter ended more than forty five (45) days prior to the Closing Date and (C) all other historical financial and other customary information regarding the Company reasonably necessary to permit Parent to prepare pro forma financial statements customary for the bank financing and the debt securities offering contemplated by the Debt Financing or the Alternative Financing (provided , that, without limiting the foregoing, nothing in this Section 6.03(a) or Section 6.04 shall require the Company to prepare any pro forma financial information or projections, which shall be the sole responsibility of Parent);

(iii) provide to Parent and the Financing Sources promptly, and in any event at least four (4) Business Days prior to the Closing Date, all documentation and other information about the Company and its Subsidiaries required by the Financing Sources or regulatory authorities with respect to the Debt Financing under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, that is required under any Debt Commitment Letter or any definitive agreement related to the Debt Financing to the extent such documentation and other information is requested in writing to the Company at least ten (10) Business Days prior to the Closing Date,

(iv) in connection with any securities offering contemplated as part of the Debt Financing or the Alternative Financing, (A) obtain customary comfort letters from the Company's independent public accounting firm, (B) cause the Company's independent public accounting firm to consent to the inclusion or incorporation of their audit reports with respect to the financial statements of the Company provided pursuant to Section 6.03(ii)(A) in any registration statement of Parent with the SEC or any prospectus, offering memoranda, private placement memoranda, marketing material or similar documentation, including by providing customary representation letters and (C) cause the Company's independent public accounting firm to cooperate with Parent and its Representatives, including by participating in accounting due diligence sessions at times and at locations reasonably acceptable to the Company and its independent public accounting firm and upon reasonable notice,

(v) subject to customary confidentiality provisions and disclaimers, provide customary authorization letters to the Financing Sources authorizing the distribution of information to prospective lenders or investors,

(vi) (A) deliver notices of prepayment and/or notices for termination of commitments within the time periods required by the Credit Agreement and obtain customary payoff letters and if applicable, instruments of discharge to be delivered at Closing to allow for the payoff, discharge and termination in full on the Closing Date of the Credit Agreement; provided that any such notice or payoff letter shall be expressly conditioned on the Closing and (B) assist Parent in delivering, on the Closing Date, the supplemental indentures and officers' certificates required to be delivered under Section 6.1 of each of the applicable Indentures due to the consummation of the Merger,

(vii) provide information concerning the Company and its Subsidiaries reasonably necessary for the completion of the definitive documentation for the Debt Financing, including any schedules thereto,

(viii) provide or cause to be provided any customary certificates, or other customary closing documents as may reasonably be requested in connection with the Debt Financing and the Alternative Financing, and

(ix) consent to the use of the trademarks, service marks and logos of the Company or any of its Subsidiaries in connection with the Debt Financing; provided that such trademarks, service marks and logos are used solely in a manner that is not intended to or is reasonably likely to harm or disparage the Company or its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries.

(b) Notwithstanding the foregoing or anything the contrary set forth in Section 6.04 below, neither the Company nor any of its Subsidiaries shall be required to (i) take or permit the taking of any action pursuant to Section 6.03(a) or Section 6.04 that (A) would require the Company, its Subsidiaries or any Persons who are directors or officers of the Company or its Subsidiaries to pass resolutions or consents to approve or authorize the execution of the Debt Financing, or any Company Note Offers and Consent Solicitations or execute or deliver any certificate, document, instrument or agreement or agree to any change or modification of any existing certificate, document, instrument or agreement, in each case, that is effective prior to the Closing, or that would be effective if the Closing does not occur (other than (x) authorization letters contemplated by Section 6.03(a)(v) and (y) to the extent required by Section 6.04 , applicable Company Supplemental Indentures and Company Indenture Officers' Certificates); (B) would cause any representation or warranty in this Agreement to be breached by the Company or any of its Subsidiaries (unless waived by Parent); (C) would require the Company or any of its Subsidiaries to pay any commitment or other similar fee prior to the Closing or incur any other expense, liability or obligation in connection with the Debt Financing or any Company Note Offers and Consent Solicitations that is not, subject to the limitations contained therein, subject to reimbursement or is not otherwise indemnified by Parent pursuant to Section 6.03(c) ; (D) would cause any director, officer or employee or stockholder of the Company or any of its Subsidiaries to incur any personal liability; or (E) would result in a material violation or breach of, or a default under, any material Contract to which the Company or any of its Subsidiaries is a party, the organizational documents of the Company or its Subsidiaries or any Applicable Law; (ii) provide access to or disclose information that the Company or any of its Subsidiaries reasonably determines would jeopardize any attorney-client privilege of the Company or any of its Subsidiaries or (iii) deliver or cause to be delivered any opinion of counsel (other than, to the extent required by Section 6.04 in connection with the entry into a Company Supplemental Indenture, a Company Opinion of Counsel if the trustee under the applicable Indenture that the Company Supplemental Indenture amends requires an opinion of counsel to the Company). Nothing contained in this Section 6.03 or Section 6.04 or otherwise shall require the Company or any of its Subsidiaries, prior to the Closing, to be an issuer or other obligor with respect to the Debt Financing or to commence any Company Note Offers and Consent Solicitations.

(c) Parent and Merger Sub shall, on a joint and several basis, promptly upon written request by the Company, reimburse the Company for all reasonable and documented out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by the Company or any of its Subsidiaries in connection with the Debt Financing or any Company Note Offers and Consent Solicitations or satisfying its obligations under this Section 6.03 or Section 6.04 , whether or not the Merger is consummated or this Agreement is terminated. Parent and Merger Sub shall, on a joint and several basis, indemnify and hold harmless the Company and its Subsidiaries and their respective Representatives from and against any and all losses, claims, damages, liabilities, reasonable out-of-pocket costs, reasonable out-of-pocket attorneys' fees, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of any thereof) suffered or incurred in connection with the Debt Financing or any Company Note Offers and Consent Solicitations or otherwise in connection with any action taken by the Company, any of its Subsidiaries or any of their respective Representatives pursuant to this Section 6.03 or Section 6.04 (other than the use of any information provided by the Company, any of its Subsidiaries or any of their respective Representatives in writing for use in connection with the Debt Financing or Company Note Offers and Consent Solicitations), except (A) in the event such losses, claims, damages, liabilities, costs, attorneys' fees, judgments, fines, penalties and amounts paid in settlement are determined by a final non-appealable judgment of a court of competent jurisdiction to have arisen out of, or resulted from, the fraud, gross negligence or willful misconduct of the Company, any of its Subsidiaries or any of their respective Representatives or (B) if this Agreement is terminated by Parent pursuant to Section 10.01(c)(ii) .

(d) Notwithstanding anything to the contrary in this Agreement, the Company's breach of any of the covenants required to be performed by it under this Section 6.03 or Section 6.04 will not be considered in determining the satisfaction of the condition set forth in Section 9.02(a) unless such breach is the primary cause of Parent being unable to obtain the proceeds of the Debt Financing at the Closing.

Section 6.04 Cooperation as to Certain Indebtedness . Parent or one of its Subsidiaries may (a) commence any of the following: (i) one or more offers to purchase any or all of the outstanding debt issued under the Indentures for cash (the " Offers to Purchase "); or (ii) one or more offers to exchange any or all of the outstanding debt issued under the Indentures for securities issued by Parent (or its Affiliates) (the " Offers to Exchange "); and (b) solicit the consent of the holders of debt issued under the Indentures regarding certain proposed amendments to the applicable Indenture (the " Consent Solicitations " and, together with the Offers to Purchase and Offers to Exchange, if any, the " Company Note Offers and Consent Solicitations "); provided that the closing of any such transaction shall not be consummated until the Closing and any such transaction shall be funded using consideration provided by Parent. Any Company Note Offers and Consent Solicitations shall be made on such terms and conditions (including price to be paid and conditionality) as are proposed by Parent and which are permitted by the terms of the applicable Indenture and applicable Laws, including SEC rules and regulations. Parent shall consult with the Company regarding the material terms and conditions of any Company Note Offers and Consent Solicitations, including the timing and commencement of any Company Note Offers and Consent Solicitations and any tender deadlines. Parent shall have provided the Company with the necessary offer to purchase, offer to exchange, consent solicitation statement, letter of transmittal, press release, if any, in connection therewith, and each other document relevant to the transaction that will be distributed by the Parent in the applicable Company Note Offers and Consent Solicitations (collectively, the " Debt Offer Documents ") a reasonable period of time in advance of commencing the applicable Company Note Offers and Consent Solicitations to allow the Company and its counsel to review and comment on such Debt Offer Documents, and Parent shall give reasonable and good faith consideration to any comments made or input provided by the Company and its legal counsel. Subject to the receipt of the requisite holder consents, in connection with any or all of the Consent Solicitations, the Company shall execute a supplemental indenture to the applicable Indenture in accordance with the terms thereof amending the terms and provisions of such Indenture as described in the applicable Debt Offer Documents in a form as reasonably requested by Parent (each, a " Company Supplemental Indenture "); provided that such supplemental indenture shall not become effective until the Closing. The Company shall, and shall cause each of its Subsidiaries to, and shall use commercially reasonable efforts to cause its and their Representatives to, provide all reasonable and customary cooperation as may be reasonably requested by Parent in writing to assist Parent in connection with any Company Note Offers and Consent Solicitations (including, but not limited to, upon Parent's written request, using commercially reasonable efforts to cause the Company's independent accountants to provide customary consents for use of their reports to the extent required in connection with any Company Note Offers and Consent Solicitations) (provided that such requested cooperation does not unreasonably interfere with the ongoing business or operations of the Company and its Subsidiaries); provided that neither the Company nor counsel for the Company shall be required to furnish any certificates, legal opinions or negative assurance letters in connection with any Company Note Offers and Consent Solicitations (other than, in connection with the execution of any Company Supplemental Indenture relating to the Consent Solicitations, with respect to which the Company shall (x) deliver customary officer's certificates (a " Company Indenture Officers' Certificate ") and (y) use commercially reasonable efforts to cause counsel for the Company to deliver customary legal opinions to the trustee under the applicable Indenture in the form required by Section 10.3 of the applicable Indenture (a " Company Opinion of Counsel "), if the trustee under the applicable Indenture that the Company Supplemental Indenture amended requires an opinion of counsel to the Company thereunder, to the extent such certificates and opinions would not conflict with applicable Laws and would be accurate in light of the facts and circumstances at the time delivered) or execute any other instruments or agreements in connection therewith other than the Company Supplemental Indenture described in the immediately preceding sentence. The dealer manager, solicitation agent, information agent, depositary or other agent retained in connection with any Company Note Offers and Consent Solicitations will be selected by Parent, retained by Parent, and their fees and out-of-pocket expenses will be paid directly by Parent. If, at any time prior to the completion of the Company Note Offers and Consent Solicitations, the Company or any of its Subsidiaries, on the one hand, or Parent or any of its Subsidiaries, on the other hand, discovers any information that should be set forth in an amendment or supplement to the Debt Offer Documents, so that the Debt Offer Documents shall 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 therein, in light of circumstances under which they are made, not misleading, such party that discovers such information shall use commercially reasonable efforts to promptly notify the other party, and an appropriate amendment or supplement prepared by Parent describing such information shall be disseminated to the holders of the applicable notes, debentures or other debt securities of the Company outstanding under the applicable Indenture. The consummation of any or all of the Company Note Offers and Consent Solicitations shall not be a condition to Closing.

Section 6.05 Abraxis CVR Agreement . The Company shall use commercially reasonable efforts to, in accordance with the provisions of the Abraxis CVR Agreement and prior to the Merger Effective Time, (a) provide or cause to be provided to the Abraxis CVR Trustee any certificate, notice, legal opinion or other documentation and (b) take or cause to be taken such other actions, in the case of each of clause (a) and (b), to the extent required under the Abraxis CVR Agreement in connection with this Agreement and the transactions contemplated hereby (including the Merger). Parent and its counsel shall be given a reasonable opportunity to review and comment on any such notice, certificate, legal opinion or other documentation and be consulted with in connection with the taking of any such action, in each case before such notice, certificate, legal opinion or other documentation is provided to Abraxis CVR Trustee or such action is taken, and the Company shall give reasonable and good faith consideration to any comments made and other input provided by Parent and its counsel in connection therewith.

ARTICLE VII

COVENANTS OF PARENT

Parent agrees that:

Section 7.01 Conduct of Parent . From the date of this Agreement until the earlier of the Merger Effective Time and the termination of this Agreement, except (x) as prohibited or required by Applicable Law, (y) as set forth in Section 7.01 of the Parent Disclosure Schedule, or (z) as otherwise required or expressly contemplated by this Agreement, unless the Company shall otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), Parent shall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to conduct its business in all material respects in the ordinary course of business consistent with past practice; provided that (i) no action by the Parent or any of its Subsidiaries to the extent expressly permitted by an exception to any of Section 7.01(a) through Section 7.01(f) will be a breach of this sentence and (ii) if Parent or any of its Subsidiaries seeks the consent of the Company to take any action prohibited by any of Section 7.01(a) through Section 7.01(f) , and such consent is withheld by the Company, the failure to take such action will not be deemed to be a breach of this sentence. Without limiting the generality of the foregoing, except (A) as prohibited or required by Applicable Law, (B) as set forth in Section 7.01 of the Parent Disclosure Schedule, or (C) as otherwise required or expressly contemplated by this Agreement, without the Company's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), Parent shall not, and shall cause each of its Subsidiaries not to:

(a) adopt or propose any change to the Parent Organizational Documents or the certificate of incorporation or bylaws of Merger Sub (whether by merger, consolidation or otherwise);

(b) (i) merge or consolidate with any other Person, (ii) acquire (including by merger, consolidation or acquisition of stock or assets) any interest in any corporation, partnership, other business organization or any division thereof or any assets, securities or property, (iii) otherwise purchase, lease, license or otherwise enter into a transaction, or (iv) agree to do any of the foregoing, in each of cases (i), (ii), (iii) or (iv), that would reasonably be expected to prevent or delay in any material respect the consummation of the transactions contemplated by this Agreement, or (v) adopt a plan of complete or partial liquidation or dissolution with respect to Parent or Merger Sub;

(c) (i) split, combine or reclassify any shares of its capital stock (other than transactions (1) solely among Parent and one or more of its wholly owned Subsidiaries or (2) solely among Parent's wholly owned Subsidiaries), (ii) declare, set aside or pay any dividend or make any other distribution (whether in cash, stock, property or any combination thereof) in respect of any shares of its capital stock or other Equity Securities, other than (A) in the case of Parent, regular cash dividends in the ordinary course of business consistent with past practice (including with respect to the timing of declaration, and the record and payment dates) in an amount not to exceed $0.41 per share of Parent Common Stock per quarter (appropriately adjusted to reflect any stock dividends, subdivisions, splits, combinations or other similar events relating to Parent Common Stock), or (B) dividends or distributions by a Subsidiary of Parent to Parent or a wholly owned Subsidiary of Parent, or (iii) redeem, repurchase, cancel or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any of its Equity Securities or any Equity Securities of any Subsidiary of Parent, other than (A) repurchases of shares of Parent Common Stock at market price, or (B) repurchases of shares of Parent Common Stock in connection with the exercise of Parent Stock Options or the vesting or settlement of Parent Restricted Stock Units, Market Based Units, Performance Share Units and other Parent Equity Awards (including in satisfaction of any amounts required to be deducted or withheld under Applicable Law), in each case outstanding as of the date of this Agreement in accordance with the present terms of such Parent Equity Awards or granted after the date of this Agreement to the extent permitted by this Agreement;

(d) issue, deliver or sell, or authorize the issuance, delivery or sale of, any shares of its capital stock or other Equity Securities, other than (i) the issuance of any shares of Parent Common Stock upon the exercise of Parent Equity Awards or other equity and equity-linked awards that are outstanding on the date of this Agreement or are granted after the date of this Agreement, (ii) with respect to capital stock or other Equity Securities of any Subsidiary of Parent, in connection with transactions (A) solely among Parent and one or more of its wholly owned Subsidiaries or (B) solely among Parent's wholly owned Subsidiaries, (iii) the grant of Parent Equity Awards or other equity and equity-linked awards to employees, directors or individual independent contractors of Parent or any of its Subsidiaries pursuant to Parent's equity compensation plans or (iv) in connection with the Parent Share Issuance;

(e) make any material change in any method of financial accounting or financial accounting principles or practices, except for any such change required by reason of (or, in the reasonable good-faith judgment of Parent, advisable under) a change in GAAP or Regulation S-X, as approved by its independent public accountants; or

(f) agree, commit or propose to do any of the foregoing.

Section 7.02 No Solicitation by Parent .

(a) From the date of this Agreement until the earlier of the Merger Effective Time and the termination of this Agreement, except as otherwise set forth in this Section 7.02 , Parent shall not, and shall cause its Subsidiaries and its and its Subsidiaries' directors and officers to not, and shall use its reasonable best efforts to cause its and its Subsidiaries' other Representatives to not, directly or indirectly, (i) solicit, initiate or take any action to knowingly facilitate or knowingly encourage (including by way of furnishing information) the submission of any Parent Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to Parent or any of its Subsidiaries or afford access to the business, properties, assets, books or records of Parent or any of its Subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, knowingly facilitate or knowingly encourage any effort by, any Third Party that Parent knows is seeking to make, or has made, a Parent Acquisition Proposal, (iii) (A) withdraw or qualify, amend or modify in any manner adverse to the Company, the Parent Board Recommendation, (B) fail to include the Parent Board Recommendation in the Joint Proxy Statement/Prospectus or (C) recommend, adopt or approve or publicly propose to recommend, adopt or approve any Parent Acquisition Proposal (any of the foregoing in this clause (iii), a " Parent Adverse Recommendation Change "), or (iv) take any action to make any "moratorium", "control share acquisition", "fair price", "supermajority", "affiliate transactions" or "business combination statute or regulation" or other similar anti-takeover laws and regulations of the State of Delaware, including Section 203 of the DGCL, inapplicable to any Third Party or any Parent Acquisition Proposal.

(b) Notwithstanding the foregoing, if at any time prior to the receipt of the Parent Stockholder Approval (the " Parent Approval Time ") (and in no event after the Parent Approval Time), the Board of Directors of Parent receives a *bona fide* written Parent Acquisition Proposal made after the date hereof which has not resulted from a violation of this Section 7.02 , the Board of Directors of Parent, directly or indirectly through its Representatives, may (x) contact the Third Party that has made such Parent Acquisition Proposal in order to ascertain facts or clarify terms for the sole purpose of the Board of Directors of Parent informing itself about such Parent Acquisition Proposal and such Third Party and (y) subject to compliance with this Section 7.02(b) , Section 7.02(c) and Section 7.02(e) , (i) engage in negotiations or discussions with any Third Party that, subject to Parent's compliance with Section 7.02(a) , has made after the date of this Agreement a Parent Superior Proposal or an unsolicited *bona fide* written Parent Acquisition Proposal that the Board of Directors of Parent determines in good faith, after consultation with its financial advisor and outside legal counsel, is or could reasonably be expected to lead to a Parent Superior Proposal, (ii) furnish to such Third Party and its Representatives and financing sources nonpublic information relating to Parent or any of its Subsidiaries pursuant to a confidentiality agreement with confidentiality and use provisions no less favorable and other provisions no less favorable in the aggregate, in each case, to Parent than those contained in the Confidentiality Agreement, a copy of which shall be provided, promptly after its execution, to the Company for informational purposes; provided that all such non-public information (to the extent that such information has not been previously provided or made available to the Company) is provided or made available to the Company, as the case may be, substantially concurrently with the time it is provided or made available to such Third Party and (iii) following receipt of a Parent Superior Proposal after the date of this Agreement, (A) make a Parent Adverse Recommendation Change and/or (B) terminate this Agreement in accordance with Section 10.01(c)(iii) to enter into a definitive agreement providing for such Parent Superior Proposal, but in the case of this clause (iii) only if the Board of Directors of Parent determines in good faith, after consultation with Parent's outside legal counsel and financial advisor, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law. Nothing contained herein shall prevent the Board of Directors of Parent from (x) complying with Rule 14e-2(a) under the 1934 Act with regard to a Parent Acquisition Proposal, so long as any action taken or statement made to so comply is consistent with this Section 7.02 , or (y) making any required disclosure to the stockholders of Parent if the Board of Directors of Parent determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with Applicable Law; provided that any Parent Adverse Recommendation Change involving or relating to a Parent Acquisition Proposal may only be made in accordance with the provisions of this Section 7.02(b) , Section 7.02(c) and Section 7.02(e) . A "stop, look and listen" disclosure or similar communication of the type contemplated by Rule 14d-9(f) under the 1934 Act shall not be a Parent Adverse Recommendation Change.

(c) In addition to the requirements set forth in Section 7.02(b) , the Board of Directors of Parent shall not take any of the actions referred to in clauses (i) through (iii) of Section 7.02(b) unless Parent shall have first delivered to the Company written notice advising the Company that Parent intends to take such action. Parent shall notify the Company as promptly as practicable (but in no event later than forty eight (48) hours) after receipt by Parent (or any of its Representatives) of any Parent Acquisition Proposal or any request for information relating to Parent or any of its Subsidiaries or for access to the business, properties, assets, books or records of Parent or any of its Subsidiaries by any Third Party that, to the knowledge of Parent, is reasonably likely to make or has made any Parent Acquisition Proposal, which notice shall be provided in writing and shall identify the Third Party making, and the material terms and conditions of, any such Parent Acquisition Proposal or request. Parent shall thereafter (x) keep the Company reasonably informed, on a reasonably current basis, of any material changes in the status and details of any such Parent Acquisition Proposal or request and (y) as promptly as practicable (but in no event later than twenty four (24) hours after receipt) provide to the Company copies of all material correspondence and written materials sent or provided to Parent or any of its Subsidiaries that describes any terms or conditions of any Parent Acquisition Proposal (as well as written summaries of any material oral communications relating to the terms and conditions of any Parent Acquisition Proposal).

(d) Notwithstanding anything in this Agreement to the contrary, at any time prior to the Parent Approval Time (and in no event after the Parent Approval Time), the Board of Directors of Parent may effect a Parent Adverse Recommendation Change involving or relating to a Parent Intervening Event if the Board of Directors of Parent determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law; provided that (i) Parent shall first notify the Company in writing of its intention to take such action, which notice shall include a reasonably detailed description of such Company Intervening Event, (ii) if requested by the Company, Parent and its Representatives shall discuss and negotiate in good faith with the Company and its Representatives (to the extent that the Company desires to so negotiate) during the four (4) Business Day period following such notice regarding any proposal by the Company to amend the terms of this Agreement in response to such Parent Intervening Event, and (iii) the Board of Directors of Parent shall not effect any Parent Adverse Recommendation Change involving or relating to a Parent Intervening Event unless, after the four (4) Business Day period described in the foregoing clause (ii), the Board of Directors of Parent determines in good faith, after consultation with its outside legal counsel and taking into account any proposal by the Company to amend the terms of this Agreement during such four (4) Business Day period, that the failure to take such action would continue to be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law.

(e) Without limiting or affecting Section 7.02(a), Section 7.02(b) or Section 7.02(c), the Board of Directors of Parent shall not make a Parent Adverse Recommendation Change involving or relating to a Parent Superior Proposal or terminate this Agreement to enter into a definitive agreement with respect to a Parent Superior Proposal unless (i) Parent first notifies the Company, in writing at least four (4) Business Days before taking such action, that Parent intends to take such action, which notice attaches the most current version of each proposed Contract or other agreement providing for such Parent Superior Proposal and the identity of the Third Party(ies) making the Parent Superior Proposal, (ii) if requested by the Company, during such four (4) Business Day period, Parent and its Representatives have discussed and negotiated in good faith with the Company (to the extent that the Company desires to so negotiate) regarding any proposal by the Company to amend the terms of this Agreement in response to such Parent Superior Proposal and (iii) after such four (4) Business Day period, the Board of Directors of Parent determines in good faith, after consultation with its financial advisor and outside legal counsel and taking into account any proposal by the Company to amend the terms of this Agreement, that such Parent Acquisition Proposal continues to constitute a Parent Superior Proposal and that the failure to take such action would continue to be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law (it being understood and agreed that in the event of any amendment to the financial terms or other material terms of any such Parent Superior Proposal, a new written notification from Parent consistent with that described in clause (i) of this Section 7.02(e) shall be required, and a new notice period under clause (i) of this Section 7.02(e) shall commence, during which notice period Parent shall be required to comply with the requirements of this Section 7.02(e) anew, except that such new notice period shall be for two (2) Business Days (as opposed to four (4) Business Days)). After delivery of such written notice pursuant to the immediately preceding sentence, Parent shall keep the Company reasonably informed on a reasonably current basis of all material developments affecting the material terms of any such Parent Superior Proposal (and Parent shall provide the Company with copies of any additional written materials received that provide for or that are material to such Parent Superior Proposal).

(f) " Parent Superior Proposal " means any *bona fide* , written Parent Acquisition Proposal (other than a Parent Acquisition Proposal which has resulted from a violation of this Section 7.02) (with all references to "twenty percent (20%)" in the definition of Parent Acquisition Proposal being deemed to be references to "fifty percent (50%)") on terms that the Board of Directors of Parent determines in good faith, after consultation with its financial advisor and outside legal counsel, and taking into account all the terms and conditions of the Parent Acquisition Proposal that the Board of Directors of Parent considers to be appropriate (including the identity of the Person making the Parent Acquisition Proposal and the expected timing and likelihood of consummation, any governmental or other approval requirements (including divestitures and entry into other commitments and limitations), break-up fees, expense reimbursement provisions, conditions to consummation and the availability of necessary financing (including, if a cash transaction (in whole or in part), the availability of such funds and the nature, terms and conditionality of any committed financing), would result in a transaction (i) that, if consummated, is more favorable to Parent's stockholders from a financial point of view than the Merger (taking into account any proposal by the Company to amend the terms of this Agreement), and (ii) that is reasonably capable of being completed on the terms proposed, taking into account the identity of the Person making the Parent Acquisition Proposal, any approval requirements and all other financial, regulatory, legal and other aspects of such Parent Acquisition Proposal.

(g) " Parent Intervening Event " means any material event, fact, change, effect, development or occurrence that (i) was not known, or the material consequences of which were not known, in each case to the Board of Directors of Parent as of or prior to the date of this Agreement and (ii) does not relate to or involve any Parent Acquisition Proposal.

(h) Parent shall, and shall cause its Subsidiaries to and its and its Subsidiaries' directors and officers to, and shall use its reasonable best efforts to cause its and its Subsidiaries' other Representatives to, cease immediately and cause to be terminated 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 Parent Acquisition Proposal or with respect to any indication, proposal or inquiry that could reasonably be expected to lead to a Parent Acquisition Proposal and shall use its reasonable best efforts to cause any such party (and any of its Representatives) in possession of confidential information about Parent or any of its Subsidiaries that was furnished by or on behalf of Parent to return or destroy all such information.

Section 7.03 Obligations of Merger Sub . Until the Merger Effective Time, Parent shall at all times be the direct or indirect owner of all of the outstanding shares of capital stock of Merger Sub. Parent shall take all action necessary to cause each of Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and subject to the conditions set forth in this Agreement. Promptly following the execution of this Agreement, Parent, in its capacity as the sole stockholder of Merger Sub, shall execute and deliver a written consent of Merger Sub adopting this Agreement in accordance with the DGCL.

Section 7.04 Director and Officer Liability .

(a) For a period of not less than six years from the Merger Effective Time, Parent shall cause the Surviving Corporation or any applicable Subsidiary thereof (collectively, the " D&O Indemnifying Parties "), to the fullest extent each such D&O Indemnifying Party is so authorized or permitted by Applicable Law, as now or hereafter in effect, to: (i) indemnify and hold harmless each person who is at the date hereof, was previously, or during the period from the date hereof through the date of the Merger Effective Time will be, serving as a director or officer of the Company or any of its Subsidiaries or, at the request or for the benefit of the Company or any of its Subsidiaries, as a director, trustee or officer of any other entity or any benefit plan maintained by the Company or any of its Subsidiaries (collectively, the " D&O Indemnified Parties "), as now or hereafter in effect, in connection with any D&O Claim and any losses, claims, damages, liabilities, Claim Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of any thereof) relating to or resulting from such D&O Claim; and (ii) promptly advance to such D&O Indemnified Party any Claim Expenses incurred in defending, serving as a witness with respect to or otherwise participating with respect to any D&O Claim in advance of the final disposition of such D&O Claim, including payment on behalf of or advancement to the D&O Indemnified Party of any Claim Expenses incurred by such D&O Indemnified Party in connection with enforcing any rights with respect to such indemnification and/or advancement, in each case without the requirement of any bond or other security, but subject to the D&O Indemnifying Party's receipt of a written undertaking by or on behalf of such D&O Indemnified Party to repay such Claim Expenses if it is ultimately determined under Applicable Law that such D&O Indemnified Party is not entitled to be indemnified. All rights to indemnification and advancement conferred hereunder shall continue as to a Person who has ceased to be a director or officer of the Company or any of its Subsidiaries after the date hereof and shall inure to the benefit of such Person's heirs, successors, executors and personal and legal representatives. As used in this Section 7.04 : (x) the term " D&O Claim " means any threatened, asserted, pending or completed claim, action, suit, proceeding, inquiry or investigation, whether instituted by any party hereto, any Governmental Authority or any other Person, whether civil, criminal, administrative, investigative or other, including any arbitration or other alternative dispute resolution mechanism, arising out of or pertaining to matters that relate to such D&O Indemnified Party's duties or service (A) as a director or officer of the Company or the applicable Subsidiary thereof at or prior to the Merger Effective Time (including with respect to any acts, facts, events or omissions occurring in connection with the approval of this Agreement, the Merger or the consummation of the other transactions contemplated by this Agreement, including the consideration and approval thereof and the process undertaken in connection therewith and any D&O Claim relating thereto) or (B) as a director, trustee or officer of any other entity or any benefit plan maintained by the Company or any of its Subsidiaries (for which such D&O Indemnified Party is or was serving at the request or for the benefit of the Company or any of its Subsidiaries) at or prior to the Merger Effective Time; and (y) the term " Claim Expenses " means reasonable out-of-pocket attorneys' fees and all other reasonable out-of-pocket costs, expenses and obligations (including experts' fees, travel expenses, court costs, retainers, transcript fees, legal research, duplicating, printing and binding costs, as well as telecommunications, postage and courier charges) paid or incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to investigate, defend, be a witness in or participate in (including on appeal) any D&O Claim for which indemnification is authorized pursuant to this Section 7.04(a) , including any action relating to a claim for indemnification or advancement brought by a D&O Indemnified Party.

(b) For a period of not less than six (6) years from the Merger Effective Time, Parent shall cause the organizational documents of the Surviving Corporation to contain provisions no less favorable with respect to indemnification, advancement of expenses and limitations on liability of directors and officers than are set forth in the Company Organizational Documents, which provisions shall not be amended, repealed or otherwise modified for a period of at least six (6) years from the Merger Effective Time in any manner that would affect adversely the rights thereunder of any D&O Indemnified Party, unless any modification or amendment is required by Applicable Law (but then only to the minimum extent required by Applicable Law). At the Company's option and expense, prior to the Merger Effective Time, the Company may purchase (and pay in full the aggregate premium for) a six (6)-year prepaid "tail" insurance policy (which policy by its express terms shall survive the Merger) of at least the same coverage and amounts and containing terms and conditions that are no less favorable to the covered individuals as the Company's and its Subsidiaries' existing directors' and officers' insurance policy or policies with a claims period of six (6) years from the Merger Effective Time for D&O Claims arising from facts, acts, events or omissions that occurred on or prior to the Merger Effective Time; provided that the premium for such tail policy shall not exceed three hundred percent (300%) of the aggregate annual amounts currently paid by the Company and its Subsidiaries for such insurance (such amount being the " Maximum Premium "). If the Company fails to obtain such tail policy prior to the Merger Effective Time, Parent or the Surviving Corporation shall obtain such a tail policy; provided , however , that the premium for such tail policy shall not exceed the Maximum Premium; provided , further , that if such tail policy cannot be obtained or can be obtained only by paying aggregate annual premiums in excess of the Maximum Premium, Parent, the Company or the Surviving Corporation shall only be required to obtain as much coverage as can be obtained by paying an annual premium equal to the Maximum Premium. Parent and the Surviving Corporation shall cause any such policy (whether obtained by Parent, the Company or the Surviving Corporation) to be maintained in full force and effect, for its full term, and Parent shall cause the Surviving Corporation to honor all its obligations thereunder.

(c) If any of Parent or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges with or into any other Person and shall not be the continuing or surviving company, partnership or other Person of such consolidation or merger or (ii) liquidates, dissolves or winds-up, or transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as applicable, assume the obligations set forth in this Section 7.04 .

Section 7.05 Employee Matters .

(a) From the Closing Date through the one (1) year anniversary thereof (the " Compensation Continuation Period "), the Surviving Corporation shall provide, and Parent shall cause the Surviving Corporation to provide, to each individual who is employed by the Company and its Subsidiaries immediately prior to the Merger Effective Time, while such individual continues to be employed by the Surviving Corporation, Parent or any of Parent's Subsidiaries (including Subsidiaries of the Surviving Corporation) during the Compensation Continuation Period (collectively, the " Affected Employees ") (i) a base salary or wage rate that is not less than the base salary or wage rate provided to such Affected Employee immediately prior to the Merger Effective Time, (ii) cash incentive compensation (including bonus opportunity and other cash incentive compensation opportunities) and equity incentive compensation no less favorable in the aggregate than the cash incentive compensation (including bonus opportunity and other cash incentive compensation opportunities) and equity incentive compensation provided to such Affected Employee immediately prior to the Merger Effective Time, and (iii) severance benefits in amounts and on terms and conditions that are no less favorable than those provided to the Affected Employees immediately prior to the Merger Effective Time, as set forth in the Company's Severance Pay Plans disclosed to Parent before the date hereof. From the Closing Date through December 31, 2019, Affected Employees shall be provided with employee benefits substantially similar in the aggregate than the employee benefits provided to such Affected Employee under the Company Employee Plans immediately prior to the Merger Effective Time; provided that, for purposes of determining that such employee benefits are no less favorable in the aggregate, defined benefit pension plan benefits, retention or change in control payments or awards provided by the Company or any of its Subsidiaries prior to the Merger Effective Time shall not be taken into account.

(b) With respect to any employee benefit plan in which any Affected Employee first becomes eligible to participate on or after the Merger Effective Time (the " New Company Plans "), Parent shall use commercially reasonable efforts to: (i) waive all pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to such Affected Employee under any New Company Plan that is a health plan in which such Affected Employee may be eligible to participate after the Merger Effective Time, and (ii) if applicable, cause to be credited, in any New Company Plan that is a health plan in which Affected Employees participate, any deductibles or out-of-pocket expenses incurred by such Affected Employee and such Affected Employee's eligible beneficiaries and dependents during the portion of the calendar year in which the Merger Effective Time occurs prior to such Affected Employee's commencement of participation in such New Company Plan providing health benefits with the objective that there be no double counting during the year in which the Merger Effective Time occurs of such deductibles or out-of-pocket expenses. Parent shall recognize service of Affected Employees (to the extent credited by the Company or its Subsidiaries) accrued prior to the Merger Effective Time for all purposes under (but not for the purposes of benefit accrual under any defined benefit pension plan) any New Company Plan in which such Affected Employees may be eligible to participate after the Merger Effective Time, provided , however , that in no event shall any credit be given to the extent it would result in the duplication of benefits for the same period of service.

(c) Parent agrees that, with respect to the annual cash incentive plans set forth on Section 7.05(c) of the Company Disclosure Schedule (the " Annual Incentive Plans "), it shall, or shall cause the Surviving Corporation, to provide each participant in an Annual Incentive Plan (each an " Incentive Plan Participant ") who remains employed with the Surviving Corporation through the end of the year during which the Closing occurs, with an annual cash incentive award for the year during which the Closing occurs, the amount of which shall be determined as the product of (i) the sum of the following: (a) a pro-rated portion of the bonus with respect to the portion of the year of the Closing that occurs prior to the Closing, which bonus shall be determined based upon actual corporate performance through the Closing Date, as determined by the Company prior to the Merger Effective Time plus (b) a pro-rated portion of the bonus with respect to the portion of the year of the Closing that occurs after the Closing, which bonus shall be no less than the bonus payable at the applicable Incentive Plan Participant's target incentive level under such Annual incentive Plan, multiplied by (ii) the Incentive Plan Participant's individual performance multiplier determined in accordance with the terms of the Annual Incentive Plan; provided that, contingent upon the execution and non-revocation of a customary release of claims in a form that is reasonably satisfactory to Parent and does not contain any restrictive covenants, each Incentive Plan Participant who experiences a termination of employment on or after the Closing due to death or disability (as defined in the Company's long-term disability plan), or with respect to which such Incentive Plan Participant is eligible to receive severance benefits under any Company Employee Plan or applicable Law, shall be entitled to the prorated payment of the amount that would otherwise have been payable under this Section 7.05(c)(i) (i.e., without applying the individual performance multiplier referred to in clause (ii)); and provided , further , that in no event shall payment of any amounts under the Annual Incentive Plans (or any pro-rated portion thereof) pursuant to this Section 7.05(c) result in the duplication of payments to any Incentive Plan Participant under any other incentive, severance or other similar arrangement.

(d) Nothing contained in this Section 7.05 or elsewhere in this Agreement, express or implied (i) shall cause either Parent or any of its Affiliates to be obligated to continue to employ any Person, including any Affected Employees, for any period of time following the Merger Effective Time, (ii) shall prevent Parent or its Affiliates from revising, amending or terminating any Company Employee Plan or any other employee benefit plan, program or policy in effect from time to time, (iii) shall be construed as an amendment of any Company Employee Plan or Parent Employee Plan, or (iv) shall create any third-party beneficiary rights in any director, officer, employee or individual Person, including any present or former employee, officer, director or individual independent contractor of the Company or any of its Subsidiaries (including any beneficiary or dependent of such individual).

Section 7.06 Financing .

(a) Each of Parent and Merger Sub shall, and shall cause their respective Subsidiaries to, use reasonable best efforts to take, or shall use reasonable best efforts to cause to be taken, all actions and to do, or cause to be done, all things necessary to obtain the Debt Financing including (i) using reasonable best efforts to (A) maintain in effect the Debt Commitment Letter and in all material respects comply with all of their respective obligations thereunder and (B) negotiate, enter into and deliver the definitive agreements with respect thereto on the terms and conditions not less favorable in the aggregate, to Parent than those contained in the Debt Commitment Letter (including, as necessary, the "market flex" provisions contained in any related fee letter) by the Closing Date, and (ii) using reasonable best efforts to satisfy (or if determined advisable by Parent, obtain the waiver of) on a timely basis all conditions to obtaining the Debt Financing within Parent's (or its Subsidiary's) control and to comply with all of its obligations pursuant to the Debt Commitment Letters or other definitive agreements related thereto to the extent the failure to comply with such obligations would adversely impact the timing of the Closing or the availability at the Closing of sufficient aggregate proceeds of the Debt Financing to consummate the transactions contemplated by this Agreement. In the event that all conditions to funding the commitments contained in the Debt Commitment Letters have been satisfied, each of Parent and Merger Sub shall, and shall cause their respective Subsidiaries to, use reasonable best efforts to cause the Financing Sources to fund the Debt Financing required to consummate the transactions contemplated by this Agreement and to pay related fees and expenses on the Closing Date. Parent shall use its reasonable best efforts to enforce all of its rights under the Debt Commitment Letters. Parent and/or Merger Sub shall pay, or cause to be paid, as the same shall become due and payable, all fees and other amounts under the Debt Commitment Letters.

(b) In the event that any portion of the Debt Financing becomes unavailable and such portion is necessary to consummate the transactions contemplated by this Agreement (except in accordance with the express terms set forth in the Debt Commitment Letters, including as a result of the entry into definitive agreements for a "Qualifying Term Loan Facility" under the applicable Debt Commitment Letters with commitments subject to substantially the same conditions as those set forth in the applicable Debt Commitment Letters or unless concurrently replaced on a dollar-for-dollar basis by commitments subject to substantially the same conditions as those set forth in the applicable Debt Commitment Letters from other Financing Sources or from proceeds of other sources of financing or cash), Parent and Merger Sub shall (i) use their reasonable best efforts to obtain, as promptly as practicable following the occurrence of such event, alternative debt financing for any such portion from alternative debt sources on terms and conditions, taken as a whole, no less favorable to Parent and Merger Sub than the terms and conditions set forth in the Debt Commitment Letter (taking into account any "market flex" provisions thereof) and in an amount that will still enable Parent and Merger Sub to consummate the transactions contemplated by this Agreement (" Alternative Financing "), and (ii) promptly notify the Company of such unavailability and the reason therefor. If obtained, Parent shall deliver to the Company true and complete copies of all commitment letters and other definitive agreements (including redacted copies of fee letters, removing only fee amounts, the rates and amounts included in the "market flex" provisions and certain other economic terms (none of which could adversely affect the amounts, availability, timing or conditionality of the Debt Financing)) pursuant to which any such alternative source shall have committed to provide Parent or the Surviving Corporation with Alternative Financing.

(c) Parent and Merger Sub shall not, without the Company's prior written consent (not to be unreasonably withheld, conditioned or delayed), permit any amendment, modification to, or any waiver of any provision or remedy under, any Debt Commitment Letter or any definitive agreement related thereto unless the terms of such Debt Commitment Letter or definitive agreement related thereto, in each case as so amended, modified or waived, are substantially similar to those in such Debt Commitment Letter or definitive agreement related thereto, prior to giving effect to such amendment, modification or waiver (other than economic terms, which shall be as good as or better for Parent and Merger Sub than those in such Debt Commitment Letter or definitive agreement relating thereto prior to giving effect to such amendment, modification or waiver); provided that in the case of amendments or modifications or waivers of any Debt Commitment Letter or any definitive agreement relating thereto, such amendment, modification or waiver would not reasonably be expected to (i) (A) add additional conditions precedent that would adversely affect the ability or likelihood of Parent or Merger Sub timely consummating the transactions contemplated by this Agreement or otherwise adversely affect the ability or likelihood of Parent or Merger Sub timely consummating the transactions contemplated by this Agreement or (B) make the timely funding of the Debt Financing or the satisfaction of the conditions to obtaining the Debt Financing materially less likely to occur, (ii) reduce the aggregate amount of the Debt Financing or (iii) materially and adversely affect the ability of Parent to enforce its rights against other parties to the Debt Commitment Letters or the definitive agreements relating thereto, it being understood and agreed that in any event, Parent may amend any of the Debt Commitment Letters or any definitive agreement relating thereto to add lenders, arrangers, bookrunners, agents, managers or similar entities that have not executed such Debt Commitment Letters as of such time and consent to the assignment of lending commitments under the Debt Commitment Letters to other lenders.

(d) Parent shall provide the Company with prompt written notice of the receipt of any notice or other communication from any Financing Source with respect to such Financing Source's failure or anticipated failure to fund its commitments under any Debt Commitment Letter or definitive agreement in connection therewith in a manner that would reasonably be expected to render it unable to consummate the transactions contemplated by this Agreement. Parent shall keep the Company reasonably informed on a reasonably current basis of the status of Parent's and its Subsidiaries' efforts to consummate the Debt Financing, including providing copies of any amendment, modification or replacement of the Debt Commitment Letter (provided that any fee letter may be redacted to remove fee amounts, the rates and amounts included in the "market flex" provisions and certain other economic terms (none of which could adversely affect the amounts, availability, timing or conditionality of the Debt Financing)). Parent shall give the Company prompt notice of any (i) material breach or material default by any party to the Debt Commitment Letters or the definitive agreements related thereto of which Parent obtains knowledge, (ii) actual or, to the knowledge of Parent, threatened in writing withdrawal, repudiation, or termination of any of the Debt Commitment Letters or such definitive agreements, or (iii) material dispute or disagreement between or among any parties to any of the Debt Commitment Letters or such definitive agreements with respect to the obligations to fund the Debt Financing or the amount of the Debt Financing to be funded at Closing.

(e) Notwithstanding anything contained in this Agreement to the contrary, Parent expressly acknowledges and agrees that Parent's and Merger Sub's obligations hereunder are not conditioned in any manner upon Parent or Merger Sub obtaining any financing.

Section 7.07 New CVR Agreement . At or immediately prior to the Merger Effective Time, Parent will execute and deliver, and Parent will cause the New CVR Trustee to execute and deliver, the New CVR Agreement, subject to any changes to the New CVR Agreement that are requested by the New CVR Trustee and approved prior to the Merger Effective Time by Parent and the Company (which approval, in the case of the Company, shall not be unreasonably withheld, conditioned or delayed).

ARTICLE VIII

COVENANTS OF PARENT AND THE COMPANY

The parties hereto agree that:

Section 8.01 Access to Information; Confidentiality .

(a) All information furnished pursuant to this Agreement shall be subject to the letter agreement, dated as of November 23, 2018 (as amended, supplemented or otherwise modified from time to time in accordance with its terms, the " Confidentiality Agreement "), between Parent and the Company. Upon reasonable notice, during normal business hours during the period from the date of this Agreement to the earlier of the Merger Effective Time or the termination of this Agreement, solely for purposes of furthering the Merger and the other transactions contemplated hereby or integration planning relating thereto, (i) the Company shall, and shall cause its Subsidiaries to, afford to Parent and its Representatives, reasonable access, to all of its properties, books, contracts and records, and (ii) the Company shall, and shall cause its Subsidiaries to, make available to Parent all other information not made available pursuant to clause (i) of this Section 8.01(a) concerning its businesses, properties and personnel as the other may reasonably request (in the case of each of clause (i) and (ii), in a manner so as to not unreasonably interfere with the normal business operations of the Company or any of its Subsidiaries). During such period described in the immediately preceding sentence, upon reasonable notice and subject to Applicable Law and during normal business hours, the Company shall instruct its pertinent Representatives to reasonably cooperate with Parent in its review of any such information provided or made available pursuant to the immediately preceding sentence. No information or knowledge obtained in any review or investigation pursuant to this Section 8.01 shall affect or be deemed to modify any representation or warranty made by the Company or Parent pursuant to this Agreement.

(b) Notwithstanding anything to the contrary in this Section 8.01 , Section 8.02 or Section 8.03 , none of the Company, Parent or any of their respective Subsidiaries shall be required to provide access to, disclose information to or assist or cooperate with the other party, in each case if such access, disclosure, assistance or cooperation (i) would, as reasonably determined based on the advice of outside counsel, jeopardize any attorney-client privilege with respect to such information, or (ii) would contravene any Applicable Law or Contract to which the applicable party is a subject or bound; provided that the Company and Parent shall, and each shall cause its Subsidiaries to, use reasonable best efforts to make appropriate substitute disclosure arrangements under circumstances in which such restrictions apply (including redacting such information (A) to remove references concerning valuation, (B) as necessary to comply with any Contract in effect on the date hereof or after the date hereof and (C) as necessary to address reasonable attorney-client, work-product or other privilege or confidentiality concerns) and to provide such information as to the applicable matter as can be conveyed. Each of the Company and Parent may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 8.01 or Section 8.02 as "Outside Counsel Only Material". Such materials and the information contained therein shall be given only to the outside counsel of the recipient and, subject to any additional confidentiality or joint defense agreement the parties may mutually propose and enter into, will not be disclosed by such outside counsel to employees, officers or directors of the recipient unless express permission is obtained in advance from the source of the materials (the Company or Parent, as the case may be) or its legal counsel.

Section 8.02 Reasonable Best Efforts .

(a) Subject to the terms and conditions of this Agreement, including Section 8.02(b) and Section 8.02(c) , each of the Company and Parent shall, and each shall cause its Subsidiaries to, use their respective reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under Applicable Law to consummate the Merger and other transactions contemplated hereby as promptly as practicable, including (i) (A) preparing and filing as promptly as practicable with any Governmental Authority or other Third Party all documentation to effect all Filings as are necessary, proper or advisable to consummate the Merger and the other transactions contemplated hereby, (B) using reasonable best efforts to obtain, as promptly as practicable, and thereafter maintain, all Consents required to be obtained from any Governmental Authority or other Third Party that are necessary, proper or advisable to consummate the Merger or other transactions contemplated hereby, and complying with the terms and conditions of each Consent (including by supplying as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act or other applicable Antitrust Laws), and (C) cooperating, to the extent reasonable, with the other parties hereto in their efforts to comply with their obligations under this Agreement, including in seeking to obtain as promptly as practicable any required Consents and (ii) using reasonable best efforts to contest (which includes by litigation) any (A) action, suit, investigation or proceeding brought by any Governmental Authority in a court of competent jurisdiction seeking to enjoin, restrain, prevent, prohibit or make illegal consummation of the Merger or any of the other transactions contemplated hereby or seeking damages or to impose any terms or conditions in connection with the Merger or any of the other transactions contemplated hereby or (B) Order that has been entered by a court of competent jurisdiction that enjoins, restrains, prevents, prohibits or makes illegal consummation of the Merger or any of the other transactions contemplated hereby or imposes any damages, terms or conditions in connection with the Merger or any of the other transactions contemplated hereby. The parties understand and agree that, subject to Section 8.02(b) and Section 8.02(g) , Parent's obligation to use its reasonable best efforts set forth in this Section 8.02(a) includes taking and agreeing to take all actions and doing or agreeing to do all things necessary, proper or advisable under Applicable Law (including divestitures, hold separate arrangements, the termination, assignment, novation or modification of Contracts (or portions thereof) or other business relationships, the acceptance of restrictions on business operations and the entry into other commitments and limitations) to satisfy the conditions set forth in Section 9.01(f) or Section 9.01(c) (if the injunction or other Order relates to any Antitrust Law) and to consummate the Merger and the other transactions contemplated hereby.

(b) Notwithstanding Section 8.02(a) or anything else in this Agreement to the contrary, nothing in this Agreement will obligate or require Parent, Merger Sub or any of their respective Subsidiaries to take or cause to be taken any action (or refrain or cause to refrain from taking any action) or agree or cause to agree to any term, condition or limitation (including, in each case, any of the actions or items referred to in the last sentence of Section 8.02(a)) as a condition to, or in connection with, (i) the expiration or termination of any applicable waiting period relating to the Merger under the HSR Act, (ii) any Foreign Antitrust Law or (iii) obtaining any other Consent from a Governmental Authority or otherwise, in each case if such action (or refraining from such action), term, condition or limitation would have or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the financial condition, business or results of operations of the Company, Parent and their respective Subsidiaries, taken as a whole, after giving effect to the Merger.

(c) Without limiting in any respect Parent's obligations under this Section 8.02 , Parent shall have the right to (i) direct, devise and implement the strategy for obtaining any necessary approval of, for responding to any request from, inquiry or investigation by (including directing the timing, nature and substance of all such responses), and shall have the right to lead all meetings and communications (including any negotiations) with, any Governmental Authority that has authority to enforce any Antitrust Law and (ii) without limiting the generality of clause (i) of this Section 8.02(c) or the obligations of the Company under this Section 8.02 , control the defense and settlement of any litigation, action, suit, investigation or proceeding brought by or before any Governmental Authority that has authority to enforce any Antitrust Law. Parent shall consult with the Company in a reasonable manner and consider in good faith the views and comments of the Company in connection with the foregoing.

(d) In furtherance and not in limitation of the foregoing, each of the Company and Parent shall, and each shall cause its Subsidiaries to, as promptly as practicable following the date of this Agreement, make all Filings with all Governmental Authorities that are necessary, proper or advisable under this Agreement or Applicable Law to consummate and make effective the Merger and the other transactions contemplated hereby, including: (i) not later than ten (10) Business Days following the date of this Agreement (unless the parties otherwise agree to another time period), the Company and Parent each making an appropriate Filing of a notification and report form pursuant to the HSR Act with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice with respect to the Merger and the other transactions contemplated hereby and requesting early termination of the waiting period under the HSR Act; (ii) as promptly as practicable following the date hereof the Company and Parent each making any other Filing that is necessary, proper or advisable under any Foreign Antitrust Law; and (iii) as promptly as practicable following the date hereof the Company and Parent each making any other Filing that is necessary, proper or advisable under any other Applicable Laws or by any Governmental Authority with jurisdiction over enforcement of any of the foregoing.

(e) To the extent permitted by Applicable Law, the Company and Parent shall, as promptly as practicable, (i) upon request from a Governmental Authority, furnish to such Governmental Authority, any information or documentation concerning themselves, their Affiliates, directors, officers and stockholders information or documentation concerning the Merger and the other transactions contemplated hereby and such other matters as may be requested and (ii) make available their respective Representatives to, upon reasonable request, any Governmental Authority, in the case of each of clause (i) and (ii), in connection with (A) the preparation of any Filing made by or on their behalf to any Governmental Authority in connection with the Merger or any of the other transactions contemplated hereby or (B) any Governmental Authority investigation, review or approval process.

(f) Subject to Section 8.02(c), Applicable Laws relating to the sharing of information and the terms and conditions of the Confidentiality Agreement and all other agreements entered into by the parties to this Agreement, and subject to the proviso at the end of this Section 8.02(f), each of the Company and Parent shall, and each shall cause its Subsidiaries to: (i) (A) as far in advance as practicable, notify the other party of, and provide the other party with an opportunity to consult with respect to, any Filing or non-ministerial communication or inquiry it or any of its Affiliates intends to make with any Governmental Authority relating to the matters that are the subject of this Agreement, (B) prior to submitting any such Filing or making any such communication or inquiry, the submitting or making party shall provide the other party and its counsel a reasonable opportunity to review, and shall consider in good faith the comments of the other party and such other party's Representatives in connection with any such Filing, communication or inquiry, and (C) promptly following the submission of such Filing or making of such communication or inquiry, provide the other party with a copy of any such Filing or, if in written form, communication or inquiry, or, if in oral form, a summary of any such communication or inquiry; provided, however, that this Section 8.02(f)(i) shall not apply to any initial filings made pursuant to the HSR Act; (ii) as promptly as practicable following receipt, furnish the other party with a copy of any Filing or, if in written form, non-ministerial communication or inquiry, or, if in oral form, a summary of any non-ministerial communication or inquiry, that it or any of its Affiliates receives from any Governmental Authority relating to matters that are the subject of this Agreement; and (iii) coordinate and reasonably cooperate with the other party in exchanging such information and providing such other assistance as the other party may reasonably request in connection with this Section 8.02 (including in seeking early termination of any applicable waiting periods under the HSR Act). Subject to Section 8.02(c), none of the Company, Parent or their respective Representatives shall agree to participate in any meeting or non-ministerial conference (including by telephone) with any Governmental Authority, or any member of the staff of any Governmental Authority, in respect of any Filing, proceeding, investigation (including the settlement of any investigation), litigation or other inquiry regarding the Merger or any of the other transactions contemplated hereby unless it consults with the other party in advance and, to the extent permitted by such Governmental Authority, allows the other party to participate; provided, however, materials provided to the other party pursuant to this Section 8.02 may be redacted to remove references concerning the valuation of Parent, the Company or any of their Subsidiaries.

(g) Notwithstanding anything in this Agreement to the contrary, in no event shall (i) Parent or any of its Affiliates or the Company or any of its Affiliates be required to agree to take or enter into any action which is not conditioned upon, and shall become effective from and after, the Closing, or (ii) the Company or any of its Affiliates agree to any obligation, restriction, requirement, limitation, qualification, condition, remedy or other action in connection with obtaining the Consents under Antitrust Laws required to be obtained by the parties or their respective Subsidiaries in connection with the Merger without the prior written consent of Parent (including in connection with obtaining any of the governmental approvals described in Section 8.02(b)) (which consent shall not be withheld, delayed or conditioned if doing so would be inconsistent with Parent's obligations under this Section 8.02), but, if requested by Parent in writing, the Company shall, and shall cause its Subsidiaries to, subject to clause (i) of this Section 8.02(g) , take any such actions to obtain any of the governmental approvals described in Section 8.02(b) .

Section 8.03 Certain Filings; SEC Matters .

(a) As promptly as practicable following the date of this Agreement, (i) the Company and Parent shall jointly prepare and file with the SEC a proxy statement relating to the Company Stockholder Meeting and the Parent Stockholder Meeting (together with all amendments and supplements thereto, the " Joint Proxy Statement/Prospectus ") in preliminary form, and (ii) Parent shall prepare and file with the SEC a Registration Statement on Form S-4 which shall include the Joint Proxy Statement/Prospectus (together with all amendments and supplements thereto, the " Registration Statement ") relating to the registration of the shares of Parent Common Stock to be issued to the stockholders of the Company pursuant to the Parent Share Issuance and the New CVRs to be issued to the stockholders of the Company in connection with the Merger. The Joint Proxy Statement/Prospectus and the Registration Statement shall comply as to form in all material respects with the applicable provisions of the 1933 Act, the 1934 Act and other Applicable Law.

(b) Each of the Company and Parent shall use its reasonable best efforts to have the Joint Proxy Statement/Prospectus cleared by the SEC as promptly as practicable after its filing, and Parent shall use its reasonable best efforts to have the Registration Statement declared effective under the 1933 Act as promptly as practicable after its filing and keep the Registration Statement effective for so long as necessary to consummate the Merger and, if required by Applicable Law, to have the New CVR Agreement become qualified under the Trust Indenture Act. Each of the Company and Parent shall, as promptly as practicable after the receipt thereof, provide the other party with copies of any written comments and advise the other party of any oral comments with respect to the Joint Proxy Statement/Prospectus and the Registration Statement received by such party from the SEC or any other Governmental Authority, including any request from the SEC for amendments or supplements to the Joint Proxy Statement/Prospectus and the Registration Statement, and shall provide the other with copies of all material or substantive correspondence between it and its Representatives, on the one hand, and the SEC or any other Governmental Authority, on the other hand, related to the foregoing. Notwithstanding the foregoing, prior to filing the Registration Statement or mailing the Joint Proxy Statement/Prospectus or responding to any comments of the SEC with respect thereto, each of the Company and Parent shall reasonably cooperate and provide the other party and its counsel a reasonable opportunity to review such document or response (including the proposed final version of such document or response) and consider in good faith the comments of the other party or such other party's Representatives in connection with any such document or response. None of the Company, Parent or any of their respective Representatives shall agree to participate in any material or substantive meeting or conference (including by telephone) with the SEC, or any member of the staff thereof, in respect of the Registration Statement or the Joint Proxy Statement/Prospectus unless it consults with the other party in advance and, to the extent permitted by the SEC, allows the other party to participate. Parent shall advise the Company, promptly after receipt of notice thereof, of the time of effectiveness of the Registration Statement, and the issuance of any stop order relating thereto or the suspension of the qualification of shares of Parent Common Stock for offering or sale in any jurisdiction, and each of the Company and Parent shall use its reasonable best efforts to have any such stop order or suspension lifted, reversed or otherwise terminated.

(c) Each of the Company and Parent shall use its reasonable best efforts to take any other action required to be taken by it under the 1933 Act, the 1934 Act, the DGCL and the rules of the NYSE and Nasdaq in connection with the filing and distribution of the Joint Proxy Statement/Prospectus and the Registration Statement, and the solicitation of proxies from the stockholders of each of the Company and Parent thereunder. Subject to Section 6.02 , the Joint Proxy Statement/Prospectus shall include the Company Board Recommendation, and, subject to Section 7.02 , the Joint Proxy Statement/Prospectus shall include the Parent Board Recommendation.

(d) Parent shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do or cause to be done all things, necessary, proper or advisable under Applicable Laws and the rules and policies of the NYSE and the SEC to enable the listing of the Parent Common Stock and the New CVRs being registered pursuant to the Registration Statement on the NYSE (or other national securities exchange) no later than the Merger Effective Time, subject to official notice of issuance. Parent shall also use its reasonable best efforts to obtain all necessary state securities law or "blue sky" permits and approvals required to carry out the transactions contemplated by this Agreement (provided that in no event shall Parent be required to qualify to do business in any jurisdiction in which it is not now so qualified or file a general consent to service of process).

(e) Each of the Company and Parent shall, upon request, furnish to the other all information concerning itself, its Subsidiaries, directors, officers and (to the extent reasonably available to the applicable party) stockholders and such other matters as may be reasonably necessary or advisable in connection with any statement, Filing, notice or application made by or on behalf of the Company, Parent or any of their respective Subsidiaries, to the SEC or the NYSE in connection with the Merger and the other transactions contemplated by this Agreement, including the Registration Statement and the Joint Proxy Statement/Prospectus: provided , however , that neither party shall use any such information for any purposes other than those contemplated by this Agreement unless such party obtains the prior written consent of the other. In addition, each of the Company and Parent shall use its reasonable best efforts to provide information concerning it necessary to enable the Company and Parent to prepare required pro forma financial statements and related footnotes in connection with the preparation of the Registration Statement and/or the Joint Proxy Statement/Prospectus.

(f) If at any time prior to the later of the Company Approval Time and the Parent Approval Time, any information relating to the Company or Parent, or any of their respective Affiliates, officers or directors, should be discovered by the Company or Parent that should be set forth in an amendment or supplement to either of the Registration Statement or the Joint Proxy Statement/Prospectus, so that either of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other party hereto, and each party shall use reasonable best efforts to, and reasonably cooperate with the other to, promptly prepare and file with the SEC an appropriate amendment or supplement describing such information and, to the extent required under Applicable Law, disseminate such amendment or supplement to the stockholders of each of the Company and Parent.

Section 8.04 Stockholder Meetings .

(a) Promptly following the effectiveness of the Registration Statement (and, in the case of clause (iii), within forty (40) days of the Company Record Date), the Company shall, in consultation with Parent, in accordance with Applicable Law and the Company Organizational Documents, (i) establish a record date (the " Company Record Date ") for, duly call and give notice of a meeting of the stockholders of the Company entitled to vote on the Merger (the " Company Stockholder Meeting ") at which meeting the Company shall seek the Company Stockholder Approval (and will use reasonable best efforts to conduct "broker searches" in a manner to enable the Company Record Date to be held promptly following the effectiveness of the Registration Statement), (ii) cause the Joint Proxy Statement/Prospectus (and all other proxy materials for the Company Stockholder Meeting) to be mailed to its stockholders and (iii) duly convene and hold the Company Stockholder Meeting. Subject to Section 6.02 , the Company shall use its reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, necessary, proper or advisable on its part to cause the Company Stockholder Approval to be received at the Company Stockholder Meeting or any adjournment or postponement thereof, and shall comply with all legal requirements applicable to the Company Stockholder Meeting. The Company shall not, without the prior written consent of Parent, adjourn, postpone or otherwise delay the Company Stockholder Meeting; provided that the Company may, notwithstanding the foregoing, without the prior written consent of Parent, adjourn or postpone the Company Stockholder Meeting (A) if, after consultation with Parent, the Company believes in good faith that such adjournment or postponement is reasonably necessary to allow reasonable additional time to (1) solicit additional proxies necessary to obtain the Company Stockholder Approval, or (2) distribute any supplement or amendment to the Joint Proxy Statement/Prospectus that the Board of Directors of the Company has determined in good faith after consultation with outside legal counsel is necessary under Applicable Law and for such supplement or amendment to be reviewed by the Company's stockholders prior to the Company Stockholder Meeting, (B) for an absence of a quorum or (C) if the Parent Stockholder Meeting has been adjourned or postponed by Parent in accordance with Section 8.04(b) , to the extent necessary to enable the Company Stockholder Meeting and the Parent Stockholder Meeting to be held within a single period of twenty-four (24) consecutive hours as contemplated by Section 8.04(d) . Notwithstanding the foregoing, the Company may not, without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed), postpone the Company Stockholder Meeting more than a total of three (3) times pursuant to clause (A)(1) or (B) of the immediately preceding sentence, and no such postponement or adjournment pursuant to clause (A)(1) or (B) of the immediately preceding sentence shall be, without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed), for a period exceeding ten (10) Business Days. Without the prior written consent of Parent, the matters contemplated by the Company Stockholder Approval shall be the only matters (other than matters of procedure and maters required by Applicable Law to be voted on by the Company's stockholders in connection therewith) that the Company shall propose to be voted on by the stockholders of the Company at the Company Stockholder Meeting.

(b) Promptly following the effectiveness of the Registration Statement (and, in the case of clause (iii), within forty (40) days of the Company Record Date, subject to an extension of up to fifteen (15) additional Business Days as contemplated by the last sentence of this Section 8.04(b)), Parent shall, in consultation with the Company, in accordance with Applicable Law and the Parent Organizational Documents, (i) establish a record date (which date shall be the same as the Company Record Date) for, duly call and give notice of a meeting of the stockholders of Parent entitled to vote on the Parent Share Issuance (the " Parent Stockholder Meeting ") at which meeting Parent shall seek the Parent Stockholder Approval (and will use reasonable best efforts to conduct "broker searches" in a manner to enable the such record date to be held on such date), (ii) cause the Joint Proxy Statement/Prospectus (and all other proxy materials for the Parent Stockholder Meeting) to be mailed to its stockholders and (iii) duly convene and hold the Parent Stockholder Meeting. Subject to Section 7.02 , Parent shall use its reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, necessary, proper or advisable on its part to cause the Parent Stockholder Approval to be received at the Parent Stockholder Meeting or any adjournment or postponement thereof, and shall comply with all legal requirements applicable to the Parent Stockholder Meeting. Parent shall not, without the prior written consent of the Company, adjourn, postpone or otherwise delay the Parent Stockholder Meeting; provided that Parent may, notwithstanding the foregoing, without the prior written consent of the Company, adjourn or postpone the Parent Stockholder Meeting (A) if, after consultation with the Company, Parent believes in good faith that such adjournment or postponement is reasonably necessary to allow reasonable additional time to (1) solicit additional proxies necessary to obtain the Parent Stockholder Approval, or (2) distribute any supplement or amendment to the Joint Proxy Statement/Prospectus that the Board of Directors of Parent has determined in good faith after consultation with outside legal counsel is necessary under Applicable Law and for such supplement or amendment to be reviewed by Parent's stockholders prior to the Parent Stockholder Meeting, (B) for an absence of a quorum or (C) if the Company Stockholder Meeting has been adjourned or postponed by the Company in accordance with Section 8.04(a) , to the extent necessary to enable the Company Stockholder Meeting and the Parent Stockholder Meeting to be held within a single period of twenty-four (24) consecutive hours as contemplated by Section 8.04(d) . Notwithstanding the foregoing, Parent may not, without the prior written consent of the Company (such consent not to be unreasonably withheld, conditioned or delayed), postpone the Parent Stockholder Meeting more than a total of three (3) times pursuant to clause (A)(1) or (B) of the immediately preceding sentence, and no such postponement or adjournment pursuant to clause (A)(1) or (B) of the immediately preceding sentence shall be, without the prior written consent of the Company (such consent not to be unreasonably withheld, conditioned or delayed), for a period exceeding ten (10) Business Days. Without the prior written consent of the Company, the matters contemplated by the Parent Stockholder Approval shall be the only matters (other than matters of procedure and matters required by Applicable Law to be voted on by Parent's stockholders in connection therewith) that Parent shall propose to be voted on by the stockholders of Parent at the Parent Stockholder Meeting; provided , that, subject to Applicable Law, the Parent Organizational Documents and Section 8.04(d) , the Parent Stockholder Meeting may, in the sole discretion of Parent also constitute its annual meeting of stockholders so long as (i) doing so would not delay the Parent Stockholder Meeting by more than fifteen (15) Business Days beyond the date on which Parent would otherwise be able to hold the Parent Stockholder Meeting and (ii) the annual meeting does not contain any matters to be voted on that are not matters customarily submitted to a vote of stockholders at an annual meeting involving only an uncontested election of directors and other routine matters (including duly submitted stockholder proposals pursuant to Rule 14a-8 under the Exchange Act that are not eligible to be excluded).

(c) Notwithstanding (i) any Company Adverse Recommendation Change or Parent Adverse Recommendation Change, (ii) the public proposal or announcement or other submission to the Company or any of its Representatives of a Company Acquisition Proposal or the public proposal or announcement or other submission to Parent or any of its Representatives of a Parent Acquisition Proposal or (iii) anything in this Agreement to the contrary, unless this Agreement is terminated in accordance with its terms, the obligations of the Company and Parent under Section 8.03 and this Section 8.04 shall continue in full force and effect.

(d) Notwithstanding anything to the contrary herein, it is the intention of the parties that, and each of the parties shall reasonably cooperate and use their commercially reasonable efforts to cause, the date and time of the Company Stockholder Meeting and the Parent Stockholder Meeting be coordinated such that they occur within a single period of twenty-four (24) consecutive hours (and in any event as close in time as possible).

Section 8.05 Public Announcements . The initial press release concerning this Agreement and the transactions contemplated hereby shall be a joint press release to be in the form agreed upon by the Company and Parent prior to the execution of this Agreement. Following such initial press release, Parent and the Company shall consult with each other before issuing any additional press release, making any other public statement or scheduling any press conference, conference call or meeting with investors or analysts with respect to this Agreement or the transactions contemplated hereby and, except as may be required by Applicable Law or any listing agreement with or rule of any national securities exchange or association, shall not issue any such press release, make any such other public statement or schedule any such press conference, conference call or meeting before such consultation (and, to the extent applicable, shall provide copies of any such press release, statement or agreement (or any scripts for any conference calls) to the other party and shall consider in good faith the comments of the other party); provided that the restrictions set forth in this Section 8.05 shall not apply to any release or public statement (a) made or proposed to be made by the Company in compliance with Section 6.02 with respect to the matters contemplated by Section 6.02 , or made or proposed to be made by Parent in response or related to any such release or public statement that is not in violation of Section 7.02 , (b) made or proposed to be made by Parent in compliance with Section 7.02 with respect to the matters contemplated by Section 7.02 , or made or proposed to be made by the Company in response or related to any such release or public statement that is not in violation of Section 6.02 , (c) in connection with any dispute between the parties regarding this Agreement, the Merger or the other transactions contemplated hereby or (d) if the information contained therein substantially reiterates (and is not inconsistent with) previous releases or public statements made by the Company and Parent in compliance with this Section 8.05 .

Section 8.06 Notices of Certain Events . Each of the Company and Parent shall use commercially reasonable efforts to promptly notify the other of (a) any material written notice or other material written communication received by such party from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, (b) any material written notice or other material written communication received by such party from any Governmental Authority in connection with the transactions contemplated by this Agreement, (c) to the knowledge of such party, any event, change, effect, development or occurrence that would have Company Material Adverse Effect, in the case of the Company, or a Parent Material Adverse Effect, in the case of Parent, or (d) to the knowledge of such party, any event, change, development or occurrence has occurred that would reasonably be expected to cause or result in any of the conditions set forth in Article IX not being satisfied; provided that, notwithstanding the foregoing, a failure to comply with this Section 8.06 shall not constitute the failure of any condition set forth in Article IX to be satisfied unless the underlying change or event would independently result in the failure of a condition set forth in Article IX to be satisfied.

Section 8.07 Section 16 Matters . Prior to the Merger Effective Time, Parent and the Company shall take all such steps as may be required (to the extent permitted under Applicable Law) to cause any dispositions of Company Common Stock (including derivative securities with respect to Company Common Stock) or acquisitions of Parent Common Stock (including derivative securities with respect to Parent Common Stock) resulting from the transactions contemplated by this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the 1934 Act with respect to the Company, or will become subject to such reporting requirements with respect to Parent, to be exempt under Rule 16b-3 promulgated under the 1934 Act.

Section 8.08 Transaction Litigation . Subject to the last sentence of this Section 8.08 , each of the Company and Parent shall promptly notify the other of any stockholder demands, litigations, arbitrations or other similar claims, actions, suits or proceedings (including derivative claims) commenced against it, its Subsidiaries and/or its or its Subsidiaries' respective directors or officers relating to this Agreement or any of the transactions contemplated hereby or any matters relating thereto (collectively, " Transaction Litigation ") and shall keep the other party informed regarding any Transaction Litigation. Other than with respect to any Transaction Litigation where the parties are adverse to each other or in the context of any Transaction Litigation related to or arising out of a Company Acquisition Proposal or a Parent Acquisition Proposal, each of the Company and Parent shall reasonably cooperate with the other in the defense or settlement of any Transaction Litigation, and shall give the other party the opportunity to consult with it regarding the defense and settlement of such Transaction Litigation, shall consider in good faith the other party's advice with respect to such Transaction Litigation and, in the case of any Transaction Litigation involving the Company, its Subsidiaries or their respective directors or officers, the Company shall give Parent the opportunity to participate in (but not control), at Parent's expense, in the defense and settlement of such Transaction Litigation. Prior to the Merger Effective Time, other than with respect to any Transaction Litigation where the parties are adverse to each other or in the context of any Transaction Litigation related to or arising out of a Company Acquisition Proposal or a Parent Acquisition Proposal, none of the Company or any of its Subsidiaries shall settle or offer to settle any Transaction Litigation without the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed). Notwithstanding anything to the contrary in this Section 8.08 , (a) in the event of any conflict with any other covenant or agreement contained in Section 8.02 that expressly addresses the subject matter of this Section 8.08 , Section 8.02 shall govern and control, and (b) nothing in this Section 8.08 shall limit or otherwise modify the parties obligations under Section 6.02 , Section 7.02 or any other provisions of this Agreement.

Section 8.09 Stock Exchange Delisting . Each of the Company and Parent agrees to cooperate with the other party in taking, or causing to be taken, all actions necessary to delist the Company Common Stock from the Nasdaq and terminate its registration under the 1934 Act; provided that such delisting and termination shall not be effective until the Merger Effective Time.

Section 8.10 Governance . Parent shall take all necessary corporate action to cause, effective at the Merger Effective Time, (a) the number of members of the Board of Directors of Parent to be increased by two (2) and (b) the vacancies created by the foregoing clause (b) to be filled by two (2) individuals who are serving as directors of the Company immediately prior to the Merger Effective Time, who are jointly designated by the Company and Parent prior to the Closing.

Section 8.11 State Takeover Statutes . Each of Parent, Merger Sub and the Company shall (a) take all action necessary so that no "moratorium," "control share acquisition," "fair price," "supermajority," "affiliate transactions" or "business combination statute or regulation" or other similar state anti-takeover laws or regulations, or any similar provision of the Company Organizational Documents or the Parent Organizational Documents, as applicable, is or becomes applicable to the Merger or any of the other transactions contemplated hereby, and (b) if any such anti-takeover law, regulation or provision is or becomes applicable to the Merger or any other transactions contemplated hereby, cooperate and grant such approvals and take such actions as are reasonably necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to eliminate or minimize the effects of such statute or regulation on the transactions contemplated hereby.

ARTICLE IX

CONDITIONS TO THE MERGER

Section 9.01 Conditions to the Obligations of Each Party . The obligations of the Company, Parent and Merger Sub to consummate the Merger are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver) of the following conditions:

(a) the Company Stockholder Approval shall have been obtained;

(b) the Parent Stockholder Approval shall have been obtained;

(c) no injunction or other Order shall have been issued by any court or other Governmental Authority of competent jurisdiction and remain in effect that enjoins, prevents or prohibits the consummation of the Merger;

(d) the Registration Statement shall have been declared effective, no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceedings for such purpose shall be pending before the SEC;

(e) the shares of Parent Common Stock to be issued in the Parent Share Issuance and the New CVRs to be issued in the Merger shall have been approved for listing on the NYSE, subject to official notice of issuance; and

(f) any applicable waiting period under the HSR Act shall have expired or been terminated and any applicable waiting period or other Consent under each Foreign Antitrust Law set forth on Section 9.01(f) of the Company Disclosure Schedule relating to the transactions contemplated by this Agreement shall have expired, been terminated or obtained, as applicable.

Section 9.02 Conditions to the Obligations of Parent and Merger Sub . The obligations of Parent and Merger Sub to consummate the Merger is subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by Parent) of the following further conditions:

(a) the Company shall have performed, in all material respects, all of its obligations hereunder required to be performed by it at or prior to the Merger Effective Time;

(b) (i) the representations and warranties of the Company contained in Section 4.01 (other than the third sentence thereof), Section 4.02 (other than the last sentence of Section 4.02(b)), Section 4.04(a) , Section 4.05(a) , Section 4.05(b) , Section 4.26 , Section 4.27 and Section 4.28 shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (ii) the representations and warranties of the Company contained in Section 4.10(a)(ii) shall be true and correct in all respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing; and (iii) the other representations and warranties of the Company contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Company Material Adverse Effect, shall be true and correct at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date), except, in the case of this clause (iii) only, where the failure of such representations and warranties to be true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect (or, in the case of Section 4.16 , a Parent Material Adverse Effect); and

(c) Parent shall have received a certificate from an executive officer of the Company confirming the satisfaction of the conditions set forth in Section 9.02(a) and Section 9.02(b) .

Section 9.03 Conditions to the Obligations of the Company . The obligations of the Company to consummate the Merger are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by the Company) of the following further conditions:

(a) each of Parent and Merger Sub shall have performed, in all material respects, all of its obligations hereunder required to be performed by it at or prior to the Merger Effective Time;

(b) (i) the representations and warranties of Parent contained in Section 5.01 (other than the third and last sentences thereof), Section 5.02 (other than the last sentence of Section 5.02(b)), Section 5.04(a) , Section 5.05 , Section 5.23 , Section 5.24 and Section 5.25 shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (ii) the representations and warranties of Parent contained in Section 5.10(a)(ii) shall be true and correct in all respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing; and (iii) the other representations and warranties of Parent contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Parent Material Adverse Effect, shall be true and correct at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date), except, in the case of this clause (iii) only, where the failure of such representations and warranties to be true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect; and

(c) the Company shall have received a certificate from an executive officer of Parent confirming the satisfaction of the conditions set forth in Section 9.03(a) and Section 9.03(b) .

ARTICLE X

TERMINATION

Section 10.01 Termination . This Agreement may be terminated and the Merger and the other transactions contemplated hereby may be abandoned at any time prior to the Merger Effective Time (notwithstanding receipt of the Company Stockholder Approval or the Parent Stockholder Approval):

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

(b) by either the Company or Parent, if:

(i) the Merger has not been consummated on or before January 2, 2020 (as such date may be extended pursuant to the following proviso, the " End Date "); provided that, (A) if on such date, the conditions to the Closing set forth in Section 9.01(f) or Section 9.01(c) (if the injunction or other Order relates to the matters referenced in Section 9.01(f)) shall not have been satisfied, but all other conditions to the Closing shall have been satisfied (or in the case of conditions that by their terms are to be satisfied at the Closing, shall be capable of being satisfied on such date) or waived, then the End Date may be extended by either Parent or the Company for a period of sixty (60) days by written notice to the other party and (B) if on such date as extended by the immediately preceding clause (A), the conditions to the Closing set forth in Section 9.01(f) or Section 9.01(c) (if the injunction or other Order relates to the matters referenced in Section 9.01(f)) shall not have been satisfied, but all other conditions to the Closing shall have been satisfied (or in the case of conditions that by their terms are to be satisfied at the Closing, shall be capable of being satisfied on such date) or waived, then the End Date may be further extended by either Parent or the Company for another period of sixty (60) days by written notice to the other party; provided , further, that the right to terminate this Agreement or to extend the End Date, as applicable, pursuant to this Section 10.01(b)(i) shall not be available to any party whose breach of any provision of this Agreement has been the proximate cause of the failure of the Merger to be consummated by such time;

(ii) a court or other Governmental Authority of competent jurisdiction shall have issued an injunction or other Order that permanently enjoins, prevents or prohibits the consummation of the Merger and such injunction or other Order shall have become final and non-appealable; provided that the right to terminate this Agreement pursuant to this Section 10.01(b)(ii) shall not be available to any party whose breach of any provision of this Agreement has been the proximate cause of such injunction or other Order;

(iii) the Company Stockholder Approval shall not have been obtained upon a vote taken thereon at the Company Stockholder Meeting (including any adjournment or postponement thereof); or

(iv) the Parent Stockholder Approval shall not have been obtained upon a vote taken thereon at the Parent Stockholder Meeting (including any adjournment or postponement thereof); or

(c) by Parent:

(i) prior to the receipt of the Company Stockholder Approval, if (A) a Company Adverse Recommendation Change shall have occurred, or (B) at any time after a Company Acquisition Proposal shall have been publicly disclosed the Board of Directors of the Company shall have failed to publicly confirm the Company Board Recommendation within ten (10) Business Days after a written request by Parent that it do so (provided that Parent may not make such a request more than once for each (x) Company Acquisition Proposal or (y) material modification thereto);

(ii) if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company set forth in this Agreement shall have occurred that would cause any condition set forth in Section 9.02(a) or Section 9.02(b) not to be satisfied, and such breach or failure to perform (A) is incapable of being cured by the End Date or (B) has not been cured by the Company within the earlier of (x) thirty (30) days following written notice to the Company from Parent of such breach or failure to perform and (y) the End Date; provided that this Agreement may not be terminated pursuant to this Section 10.01(c)(ii) if Parent or Merger Sub is then in breach of any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach by Parent or Merger Sub would cause any condition set forth in Section 9.03(a) or Section 9.03(b) not to be satisfied; or

(iii) prior to obtaining the Parent Stockholder Approval, in order to enter into a definitive agreement providing for a Parent Superior Proposal in accordance with, and subject to the terms and conditions of, Section 7.02 ; or

(d) by the Company:

(i) prior to the receipt of the Parent Stockholder Approval, if (A) a Parent Adverse Recommendation Change shall have occurred, or (B) at any time after a Parent Acquisition Proposal has been publicly disclosed the Board of Directors of Parent shall have failed to publicly confirm the Parent Board Recommendation within ten (10) Business Days after a written request by the Company that it do so (provided that the Company may not make such a request more than once for each (x) Parent Acquisition Proposal or (y) material modification thereto);

(ii) if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Parent or Merger Sub set forth in this Agreement shall have occurred that would cause any condition set forth in Section 9.03(a) or Section 9.03(b) not to be satisfied, and such breach or failure to perform (A) is incapable of being cured by the End Date or (B) has not been cured by Parent or Merger Sub, as applicable, within the earlier of (x) thirty (30) days following written notice to Parent from the Company of such breach or failure to perform and (y) the End Date; provided that this Agreement may not be terminated pursuant to this Section 10.01(d)(ii) if the Company is then in breach of any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach by the Company would cause any condition set forth in Section 9.02(a) or Section 9.02(b) not to be satisfied; or

(iii) prior to obtaining the Company Stockholder Approval, in order to enter into a definitive agreement providing for a Company Superior Proposal in accordance with, and subject to the terms and conditions of, Section 6.02 .

The party desiring to terminate this Agreement pursuant to this Section 10.01 (other than pursuant to Section 10.01(a)) shall give written notice of such termination to the other party.

Section 10.02 Effect of Termination . If this Agreement is terminated pursuant to Section 10.01 , this Agreement shall become void and of no effect without liability of any party (or any of its Affiliates or its or their respective stockholders or Representatives) to the other party hereto, except as provided in Section 10.03 ; provided that, subject to Section 10.03(f) , neither Parent nor the Company shall be released from any liabilities or damages arising out of any (i) fraud by any party or (ii) the Willful Breach of any covenant or agreement set forth in this Agreement. The provisions of Section 6.03(a) , the first sentence of Section 8.01(a) , this Section 10.02 , Section 10.03 , Article XI (other than Section 11.13 , except to the extent that Section 11.13 relates to the specific performance of the provisions of this Agreement that survive termination) and Section 1.01 (to the extent related to the foregoing) shall survive any termination of this Agreement pursuant to Section 10.01 . In addition, the termination of this Agreement shall not affect the parties' respective obligations under the Confidentiality Agreement.

Section 10.03 Termination Fees .

(a) If this Agreement is terminated: (i) by Parent pursuant to Section 10.01(c)(i) ; (ii) by the Company pursuant to Section 10.01(d)(iii) ; (iii) by the Company or Parent pursuant to Section 10.01(b)(iii) , and in the case of clause (iii) of this sentence: (I) at or prior to the Company Stockholder Meeting a Company Acquisition Proposal shall have been publicly disclosed or announced and shall not have been publicly and irrevocably withdrawn at least four (4) days prior to the Company Stockholder Meeting; and (II) within the first (1st) anniversary of such termination of this Agreement: (1) a transaction relating to any Company Acquisition Proposal is consummated; or (2) a definitive agreement relating to any Company Acquisition Proposal is entered into by the Company or any of its Affiliates; or (iv) by Parent pursuant to Section 10.01(c)(ii) as a result of a material breach by the Company of its obligations set forth in Section 6.02 or Section 8.04(a) and, at the time of such termination, the Company Stockholder Approval shall not have been obtained, and in the case of clause (iv) of this sentence: (I) at or prior to the date of such termination a Company Acquisition Proposal shall have been made and shall not have been publicly and irrevocably withdrawn at least four (4) days prior to the Company Stockholder Meeting; and (II) within the first (1st) anniversary of such termination of this Agreement: (1) a transaction relating to any Company Acquisition Proposal is consummated; or (2) a definitive agreement relating to any Company Acquisition Proposal is entered into by the Company or any of its Subsidiaries, then (x) in the case of each of the foregoing clauses (i), (ii) and (iv), the Company shall pay to Parent (or its designee), in cash at the time specified in the following sentence, a fee in an amount equal to $2.2 billion (the " Company Termination Fee ") and (y) in the case of the foregoing clause (iii), the Company shall pay to Parent (or its designee), in cash at the time specified in the following sentence, a fee in an amount equal to the Company Termination Fee, less any amounts paid to Parent (or its designee) as of such time with respect to the Parent Fee Reimbursement. The Company Termination Fee shall be paid as follows: (x) in the case of clause (i) of the preceding sentence, within three (3) Business Days after the date of termination of this Agreement, (y) in the case of clause (ii) of the preceding sentence, on or prior to the date of such termination and (z) in the case of clause (iii) or (iv) of the preceding sentence, on or prior to the earlier of the date of the consummation of the applicable transaction and the date upon which the definitive agreement is entered into. "Company Acquisition Proposal" for purposes of this Section 10.03(a) shall have the meaning assigned thereto in the definition thereof set forth in Section 1.01 , except that references in the definition to "twenty percent (20%)" shall be replaced by "fifty percent (50%)".

(b) If this Agreement is terminated: (i) by the Company pursuant to Section 10.01(d)(i) ; (ii) by Parent pursuant to Section 10.01(c)(iii) , (iii) by the Company or Parent pursuant to Section 10.01(b)(iv) , and in the case of clause (iii) of this sentence: (I) at or prior to the Parent Stockholder Meeting a Parent Acquisition Proposal shall have been publicly disclosed or announced and shall not have been publicly and irrevocably withdrawn at least four (4) days prior to the Parent Stockholder Meeting; and (II) within the first (1st) anniversary of such termination of this Agreement: (1) a transaction relating to any Parent Acquisition Proposal is consummated; or (2) a definitive agreement relating to any Parent Acquisition Proposal is entered into by Parent or any of its Subsidiaries; or (iv) by the Company pursuant to Section 10.01(d)(ii) as a result of a material breach by Parent or Merger Sub of its obligations set forth in Section 7.02 or Section 8.04(b) and, at the time of such termination, the Parent Stockholder Approval shall not have been obtained, and in the case of clause (iv) of this sentence: (I) at or prior to the date of such termination a Parent Acquisition Proposal shall have been made and shall not have been publicly and irrevocably withdrawn at least four (4) days prior to the Parent Stockholder Meeting; and (II) within the first (1st) anniversary of such termination of this Agreement: (1) a transaction relating to any Parent Acquisition Proposal is consummated; or (2) a definitive agreement relating to any Parent Acquisition Proposal is entered into by Parent or any of its Subsidiaries, then (x) in the case of each of the foregoing clauses (i), (ii) and (iv), Parent shall pay to the Company, in cash at the time specified in the following sentence, a fee in an amount equal to $2.2 billion (the " Parent Termination Fee ") and (y) in the case of the foregoing clause (iii), Parent shall pay to the Company (or its designee), in cash at the time specified in the following sentence, a fee in an amount equal to the Parent Termination Fee, less any amounts paid to the Company (or its designee) as of such time with respect to the Company Fee Reimbursement. The Parent Termination Fee shall be paid as follows: (x) in the case of clause (i) of the preceding sentence, within three (3) Business Days after the date of termination of this Agreement, (y) in the case of clause (ii) of the preceding sentence, on or prior to the date of such termination, and (z) in the case of clause (iii) or (iv) of the preceding sentence, on or prior to the earlier of the date of the consummation of the applicable transaction and the date upon which the definitive agreement is entered into. "Parent Acquisition Proposal" for purposes of this Section 10.03(b) shall have the meaning assigned thereto in the definition thereof set forth in Section 1.01 , except that references in the definition to "twenty percent (20%)" shall be replaced by "fifty percent (50%)".

(c) If this Agreement is terminated by Parent or the Company pursuant to Section 10.01(b)(iii) , then the Company shall pay to Parent (or its designee) an amount equal to all out-of-pocket costs, fees and expenses (including legal fees and expenses) incurred by Parent and any of its Affiliates in connection with this Agreement and the transactions contemplated hereby (including obtaining the Debt Financing), subject to cap on such reimbursement of $40,000,000 (" Parent Fee Reimbursement "), within one Business Day after the date of the termination of the Agreement (in the case of any such termination by Parent) or at or prior to, and as a condition precedent to, the termination of the Agreement (in the case of any such termination by the Company).

(d) If this Agreement is terminated by Parent or the Company pursuant to Section 10.01(b)(iv) , then Parent shall pay to the Company (or its designee) an amount equal to all out-of-pocket costs, fees and expenses (including legal fees and expenses) incurred by the Company and any of its Affiliates in connection with this Agreement and the transactions contemplated hereby, subject to cap on such reimbursement of $40,000,000 (the " Company Fee Reimbursement "), within one Business Day after the date of the termination of the Agreement (in the case of any such termination by the Company) or concurrently with, and as a condition precedent to, the termination of the Agreement (in the case of any such termination by Parent).

(e) Any payment of the Company Termination Fee, the Parent Termination Fee, the Parent Fee Reimbursement or the Company Fee Reimbursement shall be made by wire transfer of immediately available funds to an account designated in writing by Parent or the Company, as applicable.

(f) The parties agree and understand that (x) in no event shall the Company be required to pay the Company Termination Fee on more than one occasion, and in no event shall Parent be required to pay the Parent Termination Fee on more than one occasion, in each case, under any circumstances, and (y) except in the case of fraud or Willful Breach of any covenant or agreement set forth in this Agreement by the other party, (1) in no event shall Parent be entitled, pursuant to this Section 10.03 , to receive an amount greater than the Company Termination Fee and any applicable additional amounts pursuant the last two sentences of this Section 10.03(f) (such additional amounts, collectively, the " Parent Additional Amounts "), and (2) in no event shall the Company be entitled, pursuant to this Section 10.03 , to receive an amount greater than the Parent Termination Fee and any applicable additional amounts pursuant to Section 6.03(a) and/or the last two sentences of this Section 10.03(f) (such additional amounts, collectively, the " Company Additional Amounts "). Notwithstanding anything to the contrary in this Agreement, except in the case of fraud or Willful Breach of any covenant or agreement set forth in this Agreement by the other party, (i) if Parent receives the Company Termination Fee and any applicable Parent Additional Amounts from the Company pursuant to this Section 10.03 , or if the Company receives the Parent Termination Fee and any applicable Company Additional Amounts from Parent pursuant to this Section 10.03 , such payment shall be the sole and exclusive remedy of the receiving party against the paying party and its Subsidiaries and their respective former, current or future partners, equityholders, managers, members, Affiliates and Representatives, and none of the paying party, any of its Subsidiaries or any of their respective former, current or future partners, equityholders, managers, members, Affiliates or Representatives shall have any further liability or obligation, in each case relating to or arising out of this Agreement or the transactions contemplated hereby, and (ii) if (A) Parent or Merger Sub receive any payments from the Company in respect of any breach of this Agreement and thereafter Parent receives the Company Termination Fee pursuant to this Section 10.03 or (B) the Company receives any payments from Parent or Merger Sub in respect of any breach of this Agreement and thereafter the Company receives the Parent Termination Fee, the amount of such Company Termination Fee or such Parent Termination Fee, as applicable, shall be reduced by the aggregate amount of such payments made by the party paying the Company Termination Fee or the Parent Termination Fee, as applicable, in respect of any such breaches (in each case, after taking into account any Parent Additional Amounts or Company Additional Amounts, as applicable). The parties acknowledge that the agreements contained in this Section 10.03 are an integral part of the transactions contemplated hereby, that, without these agreements, the parties would not enter into this Agreement and that any amounts payable pursuant to this Section 10.03 do not constitute a penalty. Accordingly, if any party fails to promptly pay any amount due pursuant to this Section 10.03 , such party shall also pay any out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by the party entitled to such payment in connection with a legal action to enforce this Agreement that results in a judgment for such amount against the party failing to promptly pay such amount. Any amount not paid when due pursuant to this Section 10.03 shall bear interest from the date such amount is due until the date paid at a rate equal to the prime rate as published in *The Wall Street Journal, Eastern Edition* in effect on the date of such payment.

(g) None of the Financing Sources shall have any liability to the Company or any Person that is an Affiliate of the Company relating to or arising out of this Agreement or the Debt Financing, whether at law, or equity, in contract, in tort or otherwise, and neither the Company nor any Person that is an Affiliate of the Company shall have any rights or claims directly against any of the Financing Sources hereunder or thereunder. The foregoing shall not impair, supplement, or otherwise modify any of the commitments and other obligations that the Financing Sources have under any Debt Commitment Letter and/or any definitive agreement related to the Debt Financing to Parent or Merger Sub or any of the rights of Parent or Merger Sub against any of the Financing Sources under any Debt Commitment Letter and/or any definitive agreement related to the Debt Financing and this Section 10.03(g) shall not limit the rights of the Company or any Person that is an Affiliate of the Company from and after the Merger Effective Time under any Debt Commitment Letter or any definitive agreement related to the Debt Financing (but not, for the avoidance of doubt, under this Agreement) to the extent the Company or any Person that is an Affiliate of the Company are party thereto.

ARTICLE XI

MISCELLANEOUS

Section 11.01 Notices . All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or email transmission, the receipt of which is confirmed in writing) and shall be given,

If to the Company, to:

Celgene Corporation
86 Morris Avenue
Summit, New Jersey 07901
Attention: Executive Vice President and General Counsel
Email: jbiller@celgene.com

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

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Steven A. Cohen
David K. Lam
Edward J. Lee
Facsimile: (212) 403 2000
Email: SACohen@wlrk.com
DKLam@wlrk.com
EJLee@wlrk.com

If to Parent or Merger Sub or, post-Closing, the Surviving Corporation, to:

Bristol-Myers Squibb Company
430 E. 29th Street, 14th Floor
New York, New York 10016
Attention: Executive Vice President, General Counsel
Email: sandra.leung@bms.com

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

Bristol-Myers Squibb Company
Route 206 & Province Line Road
Princeton, New Jersey 08540
Attention: Senior Vice President and Deputy General Counsel,
Transactional Practice Group
Email: joseph.campisi@bms.com

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

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: David Fox, P.C.
Daniel Wolf, P.C.
Jonathan Davis, P.C.
Facsimile: (212) 446-4900
Email: david.fox@kirkland.com
daniel.wolf@kirkland.com
jonathan.davis@kirkland.com

or to such other address, facsimile number or email address as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day.

Section 11.02 Survival . The representations, warranties, covenants and agreements contained in this Agreement and in any certificate or other writing delivered pursuant hereto shall not survive the Merger Effective Time, except for the covenants and agreements set forth in Article II , Section 7.04 , Section 7.05 , Section 8.10 and this Article XI .

Section 11.03 Amendments and Waivers .

(a) Any provision of this Agreement may be amended or waived prior to the Merger Effective Time if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective; provided that, after the Company Stockholder Approval or the Parent Stockholder Approval has been obtained, there shall be no amendment or waiver that would require the further approval of the stockholders of the Company or the stockholders of Parent under Applicable Law without such approval having first been obtained.

(b) Notwithstanding anything to the contrary in this Agreement, the provisions in Section 10.03(g), this Section 11.03(b), Section 11.06(a), Section 11.07, Section 11.08(b) or Section 11.09 may not be amended in a manner that is adverse to the Financing Sources without the prior written consent of the applicable Financing Source.

(c) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 11.04 Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

Section 11.05 Disclosure Schedule References and SEC Document References.

(a) The parties hereto agree that each section or subsection of the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable, shall be deemed to qualify the corresponding section or subsection of this Agreement, irrespective of whether or not any particular section or subsection of this Agreement specifically refers to the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable. The parties hereto further agree that disclosure of any item, matter or event in any particular section or subsection of either the Company Disclosure Schedule or the Parent Disclosure Schedule shall be deemed disclosure with respect to any other section or subsection of the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable, to which the relevance of such disclosure would be reasonably apparent, notwithstanding the omission of a cross-reference to such other section or subsections.

(b) The parties hereto agree that, for purpose of clause (i) of the lead-in to Article IV and clause (i) of the lead-in to Article V, as applicable, in no event shall any disclosure contained in any part of any Company SEC Document or Parent SEC Document entitled “Risk Factors”, “Forward-Looking Statements”, “Cautionary Statement Regarding Forward-Looking Statements”, “Special Note Regarding Forward Looking Statements” or “Note Regarding Forward Looking Statements” or any other disclosures in any Company SEC Document or Parent SEC Document that are cautionary, predictive or forward-looking in nature be deemed to be an exception to (or a disclosure for purposes of or otherwise qualify) any representations and warranties of any party contained in this Agreement.

Section 11.06 Binding Effect; Benefit; Assignment .

(a) The provisions of this Agreement shall be binding upon and shall inure solely to the benefit of the parties hereto, except for: (i) only following the Merger Effective Time, (w) the right of the Company's stockholders to receive the Merger Consideration in respect of shares of Company Common Stock pursuant to Article II , (v) the right of the holders of Company Stock Options to receive the Assumed In-the-Money Options and/or the Assumed Out-of-the-Money Options in respect of Company Stock Options pursuant to Section 2.06(a) , (w) the right of the holders of Company RSU Awards to receive the Assumed Restricted Unit Awards in respect of the Company RSU Awards pursuant to Section 2.06(b) , (x) the right of the holders of Company PSU Awards to receive the Assumed Performance Unit Awards in respect of the Company PSU Awards pursuant to Section 2.06(c) , (y) the right of the holders of Company RSAs to receive the Assumed Restricted Unit Awards in respect of the Company RSAs pursuant to Section 2.06(d) , and (z) the right of holders of unvested In-the-Money Options, Company RSU Awards, Company PSU Awards and Company RSAs to receive the Unvested Equity Award CVR Consideration pursuant to Section 2.06(e) , (ii) the right of the D&O Indemnified Parties to enforce the provisions of Section 7.04 only, and (iii) the right of each of the Financing Sources as an express third-party beneficiary of Section 10.03(g) , Section 11.03(b) , this Section 11.06(a) , Section 11.07 , Section 11.08(b) and Section 11.09 .

(b) No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of each other party hereto, except that Parent may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to one or more of its wholly owned Subsidiaries at any time or any other Person after the Closing, and Merger Sub may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to any other wholly owned Subsidiary of Parent that is a Delaware corporation; provided that such transfer or assignment by Parent or Merger Sub shall not relieve Parent or Merger Sub of its obligations hereunder or otherwise alter or change any obligation of any other party hereto or delay the consummation of the Merger or any of the other transactions contemplated hereby.

Section 11.07 Governing Law . This Agreement, and all disputes, claims, actions, suits or proceedings based upon, arising out of or related to this Agreement or the transactions contemplated hereby, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules or principles that would result in the application of the law of any other state.

Section 11.08 Jurisdiction/Venue .

(a) Each of the parties hereto (i) irrevocably consents to the service of the summons and complaint and any other process with respect to any dispute, claim, action, suit or proceeding based upon, arising out of or related to this Agreement or any of the transactions contemplated hereby, on behalf of itself or its property, in accordance with Section 11.01 or in such other manner as may be permitted by Applicable Law, and nothing in this Section 11.08 shall affect the right of any party to serve legal process in any other manner permitted by Applicable Law, (ii) irrevocably and unconditionally consents and submits itself and its property with respect to any such dispute, claim, action, suit or proceeding to the exclusive general jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), and for recognition and enforcement of any judgment in respect thereof, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (iv) irrevocably and unconditionally agrees that any dispute, claim, action, suit or proceeding based upon, arising out of or related to this Agreement or any of the transactions contemplated hereby shall be brought, tried and determined only in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware), (v) waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that any such dispute, claim, action, suit or proceeding was brought in an inconvenient court and agrees not to plead or claim the same and (vi) agrees that it shall not bring any dispute, claim, action, suit or proceeding based upon, arising out of or related to this Agreement or any of the transactions contemplated hereby in any court other than the aforesaid courts. Each of Parent, Merger Sub and the Company agrees that a final judgment in any action or proceeding in such court as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(b) Notwithstanding anything herein to the contrary, the parties hereto acknowledge and irrevocably agree (i) that any action or proceeding, whether in law or in equity, whether in contract or tort or otherwise, involving the Financing Sources arising out of or related to the transactions contemplated hereby, the Debt Financing or the performance of services thereunder or related thereto shall be subject to the exclusive jurisdiction of any state or federal court sitting in the Borough of Manhattan, New York, New York, and any appellate court thereof and each party hereto submits for itself and its property with respect to any such action or proceeding to the exclusive jurisdiction of such court and (ii) that, except as expressly contemplated by the terms of any Debt Commitment Letter, any such action or proceeding shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of law rules of such State that would result in the application of the laws of any other State.

Section 11.09 WAIVER OF JURY TRIAL . EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MERGER OR THE OTHER TRANSACTIONS CONTEMPLATED HEREBY (INCLUDING WITH RESPECT TO THE FINANCING SOURCES). EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.09 .

Section 11.10 Counterparts; Effectiveness . This Agreement may be signed in any number of counterparts, including by facsimile or by email with .pdf attachments, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed and delivered (by electronic communication, facsimile or otherwise) by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect, and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 11.11 Entire Agreement . This Agreement and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter thereof.

Section 11.12 Severability . If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 11.13 Specific Performance . The parties acknowledge and agree that irreparable harm would occur and that the parties would not have any adequate remedy at law (a) for any breach of any of the provisions of this Agreement or (b) in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that, except where this Agreement is validly terminated in accordance with Section 10.01 , the parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to specifically enforce the terms and provisions of this Agreement, without proof of actual damages, and each party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. The parties further agree that (x) by seeking the remedies provided for in this Section 11.13 , a party shall not in any respect waive its right to any other form of relief that may be available to a party under this Agreement, including, subject to Section 10.03(f) , monetary damages in the event that the remedies provided for in this Section 11.13 are not available or otherwise are not granted, and (y) nothing contained in this Section 11.13 shall require any party to institute any proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 11.13 before exercising any termination right under Section 10.01 (and/or pursuing damages), nor shall the commencement of any action pursuant to this Section 11.13 or anything contained in this Section 11.13 restrict or limit any party's right to terminate this Agreement in accordance with the terms of Section 10.01 or pursue any other remedies under this Agreement that may be available then or thereafter. For the avoidance of doubt, in no event shall the Company or Parent be entitled to both (i) specific performance to cause the other party to consummate the Closing and (ii) the payment of the Parent Termination Fee or the Company Termination Fee, as applicable.

[*Remainder of page intentionally left blank; signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Giovanni Caforio
Name: Giovanni Caforio
Title: Chief Executive Officer

BURGUNDY MERGER SUB, INC.

By: /s/ Paul Biondi
Name: Paul Biondi
Title: President

CELGENE CORPORATION

By: /s/ Mark J. Alles
Name: Mark J. Alles
Title: Chairman and Chief Executive Officer

[Signature Page to Merger Agreement]

Exhibit 10.1

CONFIDENTIAL

FORM OF

CONTINGENT VALUE RIGHTS AGREEMENT

by and between

BRISTOL-MYERS SQUIBB COMPANY

and

[TRUSTEE] [1]

Dated as of [_____], [____]

---

1 **Note to Draft** : Trustee to be determined in accordance with the Merger Agreement.

TABLE OF CONTENTS

Note: This table of contents shall not, for any purpose, be deemed to be a part of this CVR Agreement.

Reconciliation and tie between Trust Indenture Act of 1939 and Contingent Value Rights Agreement, dated as of [____], [___].

Trust Indenture Act Section		Agreement Section
Section 310	(a)(1)	4.9
	(a)(2)	4.9
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(a)(5)	4.9
	(b)	4.8, 4.10
	(c)	Not Applicable
Section 311	(a)	4.13
	(b)	4.13
	(c)	Not Applicable
Section 312	(a)	5.1, 5.2(a)
	(b)	5.2(b)
	(c)	5.2(c)
Section 313	(a)	5.3(a)
	(b)	5.3(a)
	(c)	5.3(a), 8.11
	(d)	5.3(b)
Section 314	(a)	5.4, 7.11
	(b)	Not Applicable
	(c)(1)	1.2(a)
	(c)(2)	1.2(a)
	(c)(3)	Not Applicable
	(d)	Not Applicable
	(e)	1.2(b)
	(f)	Not Applicable
Section 315	(a)	4.1(a), 4.1(b)
	(b)	8.11
	(c)	4.1(a)
	(d)	4.1(c)
	(d)(1)	4.1(a), 4.1(b)
	(d)(2)	4.1(c)(ii)
	(d)(3)	4.1(c)(iii)
	(e)	8.12
Section 316	(a)(last sentence)	Not Applicable
	(a)(1)(A)	8.9
	(a)(1)(B)	8.10

Trust Indenture Act Section		Agreement Section
	(a)(2)	Not Applicable
	(b)	8.7
	(c)	Not Applicable
Section 317	(a)(1)	8.2
	(a)(2)	8.2
	(b)	7.3
Section 318	(a)	1.7

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this CVR Agreement.

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [_____], [____] (this " CVR Agreement "), by and between Bristol-Myers Squibb Company, a Delaware corporation (the " Company "), and [Trustee], a [_____], as trustee (the " Trustee "), in favor of each person who from time to time holds one or more Contingent Value Rights (the " Securities " or " CVRs ") to receive cash payments in the amounts and subject to the terms and conditions set forth herein.

WITNESSETH :

WHEREAS, this CVR Agreement is entered into pursuant to the Agreement and Plan of Merger, dated as of January 3, 2019 (as amended, supplemented or otherwise modified in accordance with its terms, the " Merger Agreement "), by and among the Company, Burgundy Merger Sub, Inc., a Delaware corporation and wholly owned Subsidiary of the Company (" Merger Sub "), and Celgene Corporation, a Delaware corporation (" Celgene ");

WHEREAS, pursuant to the Merger Agreement, Merger Sub will merge with and into Celgene (the " Merger "), with Celgene being the surviving corporation in the Merger and becoming a wholly-owned Subsidiary of the Company;

WHEREAS, the CVRs shall be issued in accordance with and pursuant to the terms of the Merger Agreement; and

WHEREAS, a registration statement on Form S-4 (No. 333-[_____]) with respect to the CVRs has been prepared and filed by the Company with the Commission (as defined below) and has become effective in accordance with the Securities Act of 1933, as amended.

NOW, THEREFORE, in consideration of the foregoing premises and the consummation of the transactions contemplated by the Merger Agreement, it is covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE 1
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions . For all purposes of this CVR Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(b) all capitalized terms used in this CVR Agreement without definition shall have the respective meanings ascribed to them in the Merger Agreement;

(c) all other terms used herein which are defined in the Trust Indenture Act (as defined herein), either directly or by reference therein, have the respective meanings assigned to them therein;

(d) the words " herein ," " hereof " and " hereunder " and other words of similar import refer to this CVR Agreement as a whole and not to any particular Article, Section or other subdivision; and

(e) whenever the words " include ", " includes " or " including " are used in this CVR Agreement, they shall be deemed to be followed by the words " without limitation ", whether or not they are in fact followed by those words or words of like import.

" Affiliate " of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

" Aggregate Milestone Payment " shall have the meaning set forth in Section 3.1(c) of this CVR Agreement.

" Applicable Procedures " means, with respect to any transfer or exchange of or for beneficial interests in any Global Security, the rules and procedures of the Depositary that apply to such transfer or exchange.

" BB2121 " means a chimeric antigen receptor (" CAR ") T cell therapy targeting B-cell maturation antigen (BCMA).

" BB2121 Milestone " means the first approval by the FDA of a biologic license application (BLA) that grants Celgene, the Company or any of their respective Affiliates (or their respective successors and assigns) the right to commercially manufacture, market and sell BB2121 in the United States in accordance with applicable Law for the treatment of relapsed/refractory multiple myeloma in humans.

" BB2121 Milestone Target Date " means March 31, 2021.

" Board of Directors " means the board of directors of the Company or any other body performing similar functions, or any duly authorized committee of that board.

" Board Resolution " means a copy of a resolution certified by the chairman of the Board of Directors, the chief executive officer, the secretary or any assistant secretary of the Company, to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

" Business Day " means any day (other than a Saturday or a Sunday) on which banking institutions in The City of New York, New York are not authorized or obligated by Law or executive order to close and, if the CVRs are listed on a national securities exchange, electronic trading network or other suitable trading platform, such exchange, electronic network or other trading platform is open for trading.

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

" Commission " means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act (as defined herein), or if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

" Common Stock " shall have the meaning set forth in the Recitals of this CVR Agreement.

" Company " means the Person (as defined herein) named as the "Company" in the first paragraph of this CVR Agreement, until a successor Person shall have become such pursuant to the applicable provisions of this CVR Agreement, and thereafter "Company" shall mean such successor Person. To the extent necessary to comply with the requirements of the provisions of Trust Indenture Act Sections 310 through 317, inclusive, to the extent that they are applicable to the Company, the term "Company" shall include any other obligor with respect to the Securities for the purposes of complying with such provisions.

" Company Request " or " Company Order " means a written request or order signed in the name of the Company by the chairman of the Board of Directors, the chief executive officer, any President or Vice President, the secretary or any assistant secretary or any other individual duly authorized to act on behalf of the Company for such purpose or for any general purpose, and delivered to the Trustee.

" Confidential Information " shall have the meaning set forth in Section 7.9 of this CVR Agreement.

" Corporate Trust Office " means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date of execution of this CVR Agreement is located at [_____].

" CVRs " shall have the meaning set forth in the Preamble of this CVR Agreement.

" CVR Agreement " means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

" Default Interest Rate " means a rate equal to the sum of three percent (3%) plus the prime rate of interest quoted in the Money Rates section of *The Wall Street Journal* (New York Edition), or similar reputable data source, calculated daily on the basis of a three hundred sixty-five (365) day year or, if lower, the highest rate permitted under applicable Law.

" Depositary " shall have the meaning set forth in Section 3.2 of this CVR Agreement.

" Diligent Efforts " means, with respect to any Product, efforts of a Person to carry out its obligations in a diligent manner using such effort and employing such resources normally used by such Person in the exercise of its reasonable business discretion relating to the research, development or commercialization of a product, that is of similar market potential at a similar stage in its development or product life, taking into account issues of market exclusivity (including patent coverage, regulatory and other exclusivity), safety and efficacy, product profile (including tolerability and convenience), the competitiveness of alternate products in the marketplace or under development, the launch or sales of one or more generic or biosimilar products, actual or likely pricing/reimbursement for the product, the likely timing of the product's entry into the market, the likelihood of regulatory approval of the product and applicable labeling, and the profitability of the applicable product, and other relevant factors, including technical, commercial, legal, scientific, and/or medical factors, based on conditions then prevailing.

“ Direct Registration Securities ” means Securities, the ownership of which is recorded on the Direct Registration System. The terms “deliver,” “execute,” “issue,” “register,” “surrender,” “transfer” or “cancel,” when used with respect to Direct Registration Securities, shall refer to an entry or entries or an electronic transfer or transfers in the Direct Registration System.

“ Direct Registration System ” means the system for the uncertificated registration of ownership of securities established by the Security Registrar and utilized by the Security Registrar pursuant to which the Security Registrar may record the ownership of CVRs without the issuance of a certificate, which ownership shall be evidenced by periodic statements issued by the Security Registrar to the Holders entitled thereto.

“ Event of Default ” shall have the meaning set forth in Section 8.1 of this CVR Agreement.

“ Exchange Act ” means the Securities Exchange Act of 1934, as amended.

“ Exchange Act Documents ” shall have the meaning set forth in Section 5.4(a) of this CVR Agreement.

“ FDA ” means the United States Food and Drug Administration or any successor agency.

“ Global Securities ” means global securities in registered form, substantially in the form set forth in Annex A .

“ Governmental Entity ” means any domestic (federal or state), or foreign court, commission, governmental body, regulatory or administrative agency or other political subdivision thereof.

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

“ Indirect Participant ” means a Person who holds a beneficial interest in a Global Security through a Participant.

“ Initial Milestone Target Date ” means December 31, 2020.

“ JCAR017 ” means a CAR T cell therapy targeting CD-19.

“ JCAR017 Milestone ” means the first approval by the FDA of a biologic license application (BLA) that grants Celgene, the Company or any of their respective Affiliates (or their respective successors and assigns) the right to commercially manufacture, market and sell JCAR017 in the United States in accordance with applicable Law for the treatment of any relapsed-refractory diffuse large B cell lymphoma in humans.

“ Junior Obligations ” has the meaning set forth in Section 10.1 .

“ Law ” means any foreign, federal, state, local or municipal laws, rules, judgments orders, regulations, statutes, ordinances, codes, decisions, injunctions, orders, decrees or requirements of any Governmental Entity.

“ Majority Holders ” means, at the time of determination, Holders of at least a majority of the Outstanding CVRs.

“ Merger ” shall have the meaning set forth in the Recitals of this CVR Agreement.

“ Merger Agreement ” shall have the meaning set forth in the Recitals of this CVR Agreement.

“ Merger Sub ” shall have the meaning set forth in the Recitals of this CVR Agreement.

“ Milestone ” means the satisfaction of all (but not less than all) of the following: (i) the BB2121 Milestone has occurred on or prior to the BB2121 Milestone Target Date; (ii) the JCAR017 Milestone has occurred on or prior to the Initial Milestone Target Date; and (iii) the Ozanimod Milestone has occurred on or prior to the Initial Milestone Target Date.

“ Milestone Payment ” means nine dollars ($9.00) per CVR.

“ Milestone Payment Date ” means, with respect to the Milestone, the date that is selected by the Company that is no later twenty (20) Business Days following the first date on which the Milestone is achieved.

“ Milestone Payment Record Date ” shall have the meaning set forth in Section 3.1(c) of this CVR Agreement.

“ Officer’s Certificate ” when used with respect to the Company means a certificate signed by the chairman of the Board of Directors, the chief executive officer, any President or Vice President, the secretary or any assistant secretary or any other individual authorized to act on behalf of the Company delivered to the Trustee.

“ Opinion of Counsel ” means a written opinion of counsel, who may be counsel for the Company.

“ Outstanding ” when used with respect to Securities means, as of the date of determination, all Securities theretofore authenticated, as applicable, and delivered under this CVR Agreement, except: (i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation and (ii) Securities in exchange for or in lieu of which other Securities have been authenticated, as applicable, and delivered pursuant to this CVR Agreement, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands the Securities are valid obligations of the Company; provided , however , that in determining whether the Holders of the requisite Outstanding Securities have given any request, demand, direction, consent or waiver hereunder, Securities owned by the Company or any Affiliate of the Company, whether held as treasury securities or otherwise, shall be disregarded and deemed not to be Outstanding.

“ Ozanimod ” means a small molecule sphingosine 1-phosphate receptor modulator, which binds to sphingosine 1-phosphate receptors 1 and 5.

“ Ozanimod Milestone ” means the first approval by the FDA of a new drug application (NDA) that grants Celgene, the Company or any of their respective Affiliates (or their respective successors and assigns) the right to commercially manufacture, market and sell Ozanimod in the United States in accordance with applicable Law for the treatment of relapsing multiple sclerosis in humans.

“ Participant ” means, with respect to the Depositary, a Person who has an account with the Depositary.

“ Party ” shall mean the Trustee, the Company and/or Holder(s), as applicable.

“ Paying Agent ” means any Person authorized by the Company to pay the amount determined pursuant to Section 3.1 , if any, on any Securities on behalf of the Company.

“ Person ” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

“ President ” when used with respect to the Company or the Trustee, means any president, whether or not designated by a number or a word or words added before or after the title of “president.”

“ Products ” means each of (a) BB2121, (b) JCAR017 and (c) Ozanimod.

“ Representatives ” shall have the meaning set forth in Section 7.9 of this CVR Agreement.

“ Responsible Officer ” when used with respect to the Trustee means any officer assigned to the Corporate Trust Office and also means, with respect to any particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“ Securities ” shall have the meaning set forth in the Preamble of this CVR Agreement.

“ Security Register ” shall have the meaning set forth in Section 3.5(a) of this CVR Agreement.

“ Security Registrar ” shall have the meaning set forth in Section 3.5(a) of this CVR Agreement.

" Senior Obligations " means any existing or future obligations of the Company, including the principal of, premium (if any), interest (including any interest accruing subsequent to the filing of a petition of bankruptcy at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable Law) on, and all other amounts owing thereon, (i) with respect to borrowed money, (ii) evidenced by notes, debentures, bonds or other similar debt instruments, (iii) with respect to the net obligations owed under interest rate swaps or similar agreements or currency exchange transactions, (iv) reimbursement obligations in respect of letters of credit and similar obligations, (v) in respect of capital leases, or (vi) guarantees in respect of obligations referred to in clauses (i) through (v) above; unless, in any case, the instrument creating or evidencing the same or pursuant to which the same is outstanding provides that such obligations are pari passu to or subordinate in right of payment to the Securities.

Notwithstanding the foregoing, "Senior Obligations" shall not include:

(A) Junior Obligations;

(B) trade debt incurred in the ordinary course of business;

(C) any intercompany indebtedness between the Company and any of its Subsidiaries or Affiliates;

(D) indebtedness of the Company that is expressly subordinated in right of payment to Senior Obligations;

(E) indebtedness or other obligations of the Company that by its terms ranks equal or junior in right of payment to the Junior Obligations;

(F) indebtedness of the Company that, by operation of Law, is subordinate to any general unsecured obligations of the Company; or

(G) indebtedness evidenced by any guarantee of indebtedness ranking equal or junior in right of payment to the Junior Obligations.

" Subsidiary " means, with respect to any Person, any corporation, limited liability company, association, partnership or other business entity of which more than fifty percent (50%) of the total voting power of shares of Voting Securities is at the time owned or controlled, directly or indirectly, by: (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

" Tax " means any federal, state, local or foreign income, profits, gross receipts, license, payroll, employment, severance, stamp, occupation, premium, windfall profits, environmental, customs duty, capital stock, franchise, sales, social security, unemployment, disability, use, property, withholding, excise, transfer, registration, production, value added, alternative minimum, occupancy, estimated or any other tax of any kind whatsoever, together with any interest, penalty or addition thereto, imposed by any Governmental Entity responsible for the imposition of any such tax, whether disputed or not.

" Tax Return " means any return, report, declaration, claim or other statement (including attached schedules) relating to Taxes.

" Termination Date " shall have the meaning set forth in Section 1.16 of this CVR Agreement.

" Trust Indenture Act " means the Trust Indenture Act of 1939, as amended from time to time.

" Trustee " means the Person named as the "Trustee" in the first paragraph of this CVR Agreement, until a successor Trustee shall have become such pursuant to the applicable provisions of this CVR Agreement, and thereafter "Trustee" shall mean such successor Trustee.

" Vice President " when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title of "vice president."

" Voting Securities " means securities or other interests having voting power, or the right, to elect or appoint a majority of the directors, or any Persons performing similar functions, irrespective of whether or not stock or other interests of any other class or classes shall have or might have voting power or any right by reason of the happening of any contingency.

Section 1.2 Compliance and Opinions .

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this CVR Agreement, the Company shall furnish to the Trustee an Officers' Certificate stating that, in the opinion of the signor, all conditions precedent, if any, provided for in this CVR Agreement relating to the proposed action have been complied with and an Opinion of Counsel stating, subject to customary exceptions, that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that, in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this CVR Agreement relating to such particular application or request, no additional certificate or opinion need be furnished.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this CVR Agreement shall include: (i) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (iii) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.3 Form of Documents Delivered to Trustee .

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company.

(c) Any certificate, statement or opinion of an officer of the Company or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Company. Any certificate or opinion of any independent firm of public accountants filed with the Trustee shall contain a statement that such firm is independent.

(d) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this CVR Agreement, they may, but need not, be consolidated and form one instrument.

Section 1.4 Acts of Holders .

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this CVR Agreement to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the " Act " of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this CVR Agreement and (subject to Section 4.1) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4 . The Company may set a record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this CVR Agreement. If not previously set by the Company, (i) the record date for determining the Holders entitled to vote at a meeting of the Holders shall be the date preceding the date notice of such meeting is mailed to the Holders, or if notice is not given, on the day next preceding the day such meeting is held, and (ii) the record date for determining the Holders entitled to consent to any action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company. If a record date is fixed, those Persons who were Holders of Securities at such record date (or their duly designated proxies), and only those Persons, shall be entitled to take such action by vote or consent or, except with respect to clause (d) below, to revoke any vote or consent previously given, whether or not such Persons continue to be Holders after such record date. No such vote or consent shall be valid or effective for more than one hundred twenty (120) days after such record date.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the Security Register. Neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary.

(d) At any time prior to (but not after) the evidencing to the Trustee, as provided in this Section 1.4 , of the taking of any action by the Holders of the Securities specified in this CVR Agreement in connection with such action, any Holder of a Security the serial number of which is shown by the evidence to be included among the serial numbers of the Securities the Holders of which have consented to such action may, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Section 1.4 , revoke such action so far as concerns such Security. Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security or the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done, suffered or omitted to be done by the Trustee, any Paying Agent or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

Section 1.5 Notices, etc., to Trustee and Company . Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this CVR Agreement to be made upon, given or furnished to, or filed with:

(a) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed, in writing, to or with the Trustee at its Corporate Trust Office; or

(b) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, to the Company addressed to it at:

Bristol-Myers Squibb Company
430 E. 29th Street, 14th Floor
New York, New York 10016
Attn: Executive Vice President, General Counsel

with copies to (which shall not constitute notice):

Bristol-Myers Squibb Company
Route 206 & Province Line Road
Princeton, New Jersey 08540
Attn: Senior Vice President and Deputy General Counsel, Transactional Practice Group

and

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: David Fox, P.C.
Daniel Wolf, P.C.
Jonathan Davis, P.C.

or at any other address previously furnished in writing to the Trustee by the Company.

Section 1.6 Notice to Holders; Waiver.

(a) Where this CVR Agreement provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at the Holder's address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this CVR Agreement provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

(b) In case by reason of the suspension of regular mail service or by reason of any other cause, it shall be impracticable to mail notice of any event as required by any provision of this CVR Agreement, then any method of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 1.7 Conflict with Trust Indenture Act . If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this CVR Agreement by any of the provisions of the Trust Indenture Act, such required provision shall control.

Section 1.8 Effect of Headings and Table of Contents . The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.9 Benefits of Agreement . Nothing in this CVR Agreement or in the Securities, express or implied, shall give to any Person (other than the Parties hereto and their successors hereunder, any Paying Agent and the Holders) any benefit or any legal or equitable right, remedy or claim under this CVR Agreement or under any covenant or provision herein contained, all such covenants and provisions being for sole benefit of the Parties hereto and their successors, any Paying Agent and of the Holders.

Section 1.10 Governing Law . THIS CVR AGREEMENT AND ALL SUITS, ACTIONS, PROCEEDINGS, CLAIMS AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT) BASED UPON, ARISING OUT OF OR RELATING TO THIS CVR AGREEMENT, THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS CVR AGREEMENT OR THE SECURITIES, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. EACH OF THE COMPANY, THE TRUSTEE AND EACH OF THE HOLDERS BY THEIR ACCEPTANCE OF THE SECURITIES, HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK OR ANY FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN RESPECT OF ANY SUIT, ACTION, PROCEEDING, CLAIM OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT) BASED UPON, ARISING OUT OF OR RELATING TO THIS CVR AGREEMENT, THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS CVR AGREEMENT OR THE SECURITIES, AND IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, JURISDICTION OF THE AFORESAID COURTS. EACH OF THE COMPANY AND THE TRUSTEE AGREES THAT PROCESS MAY BE SERVED UPON THEM IN ANY MANNER AUTHORIZED BY THE LAWS OF THE STATE OF NEW YORK FOR SUCH PERSONS AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO SUCH SERVICE OF PROCESS, THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 1.11 Legal Holidays . In the event that the Milestone Payment Date shall not be a Business Day, then (notwithstanding any provision of this CVR Agreement or the Securities to the contrary) payment on the Securities need not be made on such date, but may be made, without the accrual of any interest thereon, on the next succeeding Business Day with the same force and effect as if made on the Milestone Payment Date.

Section 1.12 Separability Clause . In case any provision in this CVR Agreement or in the CVRs shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.13 No Recourse Against Others . A director, officer, employee, agent or representative of the Company or any Affiliate of the Company or the Trustee shall not have any liability for any obligations of the Company or the Trustee under the Securities or this CVR Agreement or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security each Holder waives and releases all such liability and all such claims. The waiver and release are part of the consideration for the issue of the Securities.

Section 1.14 Counterparts . This CVR Agreement shall be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this CVR Agreement.

Section 1.15 Acceptance of Trust . [_____], the Trustee named herein, hereby accepts the trusts in this CVR Agreement declared and provided, upon the terms and conditions set forth herein.

Section 1.16 Termination . This CVR Agreement will, automatically and without any further action of any Party, terminate and be of no force or effect, and the Parties hereto shall have no liability or obligations hereunder, at the following time (the " Termination Date "): (a) if as of the end of the day on the Initial Milestone Target Date, either the JCAR017 Milestone or the Ozanimod Milestone has not occurred, 12:01 a.m. New York City time on the calendar day following the Initial Milestone Target Date, (b) if both the JCAR017 Milestone and the Ozanimod Milestone have occurred on or prior to the Initial Milestone Target Date but, as of the end of the day on the BB2121 Milestone Target Date, the BB2121 Milestone has not occurred, 12:01 a.m. New York City time on the calendar day following the BB2121 Milestone Target Date or (c) if the Milestone has been achieved, the calendar day following the date on which the Trustee has paid the Milestone Payment to the Holders in accordance with Section 3.1(c) ; provided , however , that (A) Sections 1.5 , 1.6 , 1.7 , 1.8 , 1.9 , 1.10 , 1.12 , 1.13 , 4.7 , 7.5 , 7.9 , 7.10 , Article 8 , this Section 1.16 and Section 1.1 (to the extent related to the foregoing) shall survive termination of this CVR Agreement in accordance with their terms; and (B) the termination of this Agreement shall not relieve any Party of any liability arising from any material breach of its obligations under this CVR Agreement occurring prior to the Termination Date.

ARTICLE 2
SECURITY FORMS

Section 2.1 Forms Generally .

(a) (i) The Global Securities and the Trustee's certificate of authentication shall be in substantially the forms set forth in Annex A , attached hereto and incorporated herein by this reference, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this CVR Agreement and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may be required by Law or any rule or regulation pursuant thereto, all as may be determined by the officers executing such Global Securities, as evidenced by their execution of the Global Securities. Any portion of the text of any Global Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Global Security.

(ii) The Global Securities shall be typewritten, printed, lithographed or engraved on steel engraved borders or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Global Securities, as evidenced by their execution of such Global Securities.

(b) The Direct Registration Securities shall be uncertificated and shall be evidenced by the Direct Registration System maintained by the Security Registrar.

ARTICLE 3
THE SECURITIES

Section 3.1 Title and Terms .

(a) The aggregate number of CVRs which may be authenticated, as applicable, and delivered under this CVR Agreement is limited to a number equal to [_____], except for Securities authenticated, as applicable, and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities pursuant to Section 3.5 , 3.6 or 6.6 . From and after the Merger Effective Time, the Company shall not be permitted to issue any CVRs that have the right to receive any portion of the Milestone Payment, except as provided and in accordance with the terms and conditions of the Merger Agreement.

(b) The Securities shall be known and designated as the "Series B Contingent Value Rights" of the Company.

(c) If the Milestone is achieved, then, on or prior to the Milestone Payment Date, the Company shall pay, or cause to be paid, to the Trustee, by wire transfer to the account designated in writing by the Trustee, an amount equal to the product of (A) the Milestone Payment, multiplied by (B) the number of Securities Outstanding as of such time (the " Aggregate Milestone Payment "), and the Trustee shall promptly (and in any event within two (2) Business Days of the receipt of the Aggregate Milestone Payment from the Company) pay to each Holder of record of the Securities as of 5:00 p.m. New York City time, three (3) Business Days prior to the Milestone Payment Date (the " Milestone Payment Record Date ") an amount equal to the product of (x) the Milestone Payment, multiplied by (y) the number of Securities held of record by such Holder as of the Milestone Payment Record Date. Subject to Section 1.16 , the Company's obligations to pay the Milestone Payment shall terminate in its entirety on the Termination Date.

(d) The Holders of the CVRs, by acceptance thereof, agree that no joint venture, partnership or other fiduciary relationship is created hereby or by the Securities.

(e) Other than in the case of interest on amounts due and payable after the occurrence of an Event of Default, no interest or dividends shall accrue on any amounts payable in respect of the CVRs.

(f) The Parties hereto agree to treat the CVRs for all Tax purposes as additional consideration for the shares of Common Stock, the Company Stock Options, the Company RSU Awards, the Company PSU Awards and Company RSAs, as applicable, pursuant to the Merger Agreement, and none of the Parties hereto will take any position to the contrary on any Tax Return or for other Tax purposes except as otherwise required by applicable Law. The Company shall report imputed interest on the CVRs pursuant to Section 483 of the Code, except as otherwise required by applicable Law.

(g) The CVRs and any interest thereon may be sold, assigned, pledged encumbered or in any manner transferred or disposed of, in whole or in part, only in compliance with applicable United States federal and state securities Laws and, to the extent applicable, in accordance with Section 3.5 .

(h) The Holder of any CVR is not, and shall not, by virtue thereof, be entitled to any rights of a holder of any Voting Securities or other equity security or other ownership interest of the Company, in any constituent company to the Merger or in any of their respective Affiliates, either at Law or in equity, and the rights of the Holders are limited to those contractual rights expressed in this CVR Agreement.

(i) Except as provided in this CVR Agreement, none of the Company or any of its Affiliates shall have any right to set-off any amounts owed or claimed to be owed by any Holder to any of them against such Holder's Securities or the Milestone Payment or other amount payable to such Holder in respect of such Securities.

Section 3.2 Registrable Form . The Securities shall be issuable only in registered form. The CVRs shall be issued initially in the form of (a) one or more permanent Global Securities, deposited with the Trustee, as the custodian for The Depository Trust Company, its nominees and successors (the " Depositary "), or (b) one or more Direct Registration Securities. Each Global Security will represent such of the outstanding CVRs as will be specified therein and each shall provide that it represents the aggregate number of outstanding CVRs from time to time endorsed thereon and that the aggregate number of outstanding CVRs represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and/or issuances as provided and in accordance with the terms and conditions of the Merger Agreement.

Section 3.3 Execution, Authentication, Delivery and Dating .

(a) The Global Securities shall be executed on behalf of the Company by its chairman of the Board of Directors, its chief executive officer, any President or Vice President or any other individual duly authorized to act on behalf of the Company for such purpose or any general purpose, but need not be attested. The signature of any of these individuals on the Global Securities may be manual or facsimile.

(b) Global Securities bearing the manual or facsimile signatures of individuals who were, at the time of execution, the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Global Securities or did not hold such offices at the date of such Global Securities.

(c) At any time and from time to time after the execution and delivery of this CVR Agreement, the Company may deliver a Company Order for the authentication, as applicable, and delivery of Securities, and the Trustee, in accordance with such Company Order, shall authenticate, as applicable, and deliver such Securities as provided in this CVR Agreement and not otherwise. In the case of Global Securities, such Company Order shall be accompanied by Global Securities executed by the Company and delivered to the Trustee for authentication in accordance with such Company Order.

(d) Each Global Security shall be dated the date of its authentication.

(e) No Global Security shall be entitled to any benefit under this CVR Agreement or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein duly executed by the Trustee, by manual or facsimile signature of an authorized officer, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Global Security has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this CVR Agreement.

(f) Direct Registration Securities need not be authenticated, and shall be valid and obligatory for all purposes and shall entitle each Holder thereof to all benefits of this CVR Agreement.

Section 3.4 [Intentionally Omitted] .

Section 3.5 Registration, Registration of Transfer and Exchange .

(a) The Company shall cause to be kept at the office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 7.2 being herein sometimes referred to as the " Security Register ") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby initially appointed " Security Registrar " for the purpose of registering Securities and transfers of Securities as herein provided.

(b) (i) A Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Securities will be exchanged by the Company for Direct Registration Securities if (1) the Company delivers to the Security Registrar notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Company within 120 days after the date of such notice from the Depositary, (2) the Company in its sole discretion determines that the Global Securities (in whole but not in part) should be exchanged for Direct Registration Securities and delivers a written notice to such effect to the Security Registrar or (3) an Event of Default has occurred and is continuing and the Security Registrar has received a request from the Depositary to issue Direct Registration Securities. Upon the occurrence of either of the preceding events in (1) or (2) above, Direct Registration Securities shall be issued in such names as the Depositary shall instruct the Trustee. Global Securities also may be exchanged or replaced, in whole or in part, as provided in Section 3.6 hereof. Every Global Security authenticated and delivered in exchange for, or in lieu of, a Global Security or any portion thereof, pursuant to this Sections 3.5 or 3.6 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Security. A Global Security may not be exchanged for another Global Security other than as provided in this Section 3.5(b)(i) , however, beneficial interests in a Global Security may be transferred and exchanged as provided in Section 3.5(b)(ii) or (iii) hereof.

(ii) The transfer and exchange of beneficial interests in the Global Securities will be effected through the Depositary, in accordance with the provisions of this CVR Agreement and the Applicable Procedures. Beneficial interests in any Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in Global Security. No written orders or instructions shall be required to be delivered to the Security Registrar to effect the transfers described in this Section 3.5(b)(ii) .

(iii) If any holder of a beneficial interest in a Global Security proposes to exchange such beneficial interest for a Direct Registration Security or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Direct Registration Security, then the Security Registrar will cause the aggregate number of CVRs represented by the applicable Global Security to be reduced accordingly pursuant to Section 3.5(b)(vi) hereof, and the Security Registrar will deliver to the Person designated in the instructions a Direct Registration Security in the appropriate number of CVRs. Any Direct Registration Security issued in exchange for a beneficial interest pursuant to this Section 3.5(b)(iii) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Security Registrar from or through the Depositary and the Participant or Indirect Participant.

(iv) A Holder of a Direct Registration Security may exchange such Direct Registration Security for a beneficial interest in a Global Security or transfer such Direct Registration Security to a Person who takes delivery thereof in the form of a beneficial interest in a Global Security at any time. Upon receipt of a request for such an exchange or transfer, the Security Registrar will cancel the applicable Direct Registration Security and increase or cause to be increased the aggregate number of CVRs represented by one of the Global Securities.

(v) Upon request by a Holder of Direct Registration Securities and such Holder's compliance with the provisions of this Section 3.5(b)(v), the Security Registrar will register the transfer or exchange of Direct Registration Securities. Prior to such registration of transfer or exchange, the requesting Holder must present to the Security Registrar a written instruction of transfer in form satisfactory to the Security Registrar duly executed by such Holder or by its attorney, duly authorized in writing. A Holder of Direct Registration Securities may transfer such Direct Registration Securities to a Person who takes delivery thereof in the form of Direct Registration Securities. Upon receipt of a request to register such a transfer, the Security Registrar shall register the Direct Registration Securities pursuant to the instructions from the Holder thereof.

(vi) At such time as all beneficial interests in a particular Global Security have been exchanged for Direct Registration Securities or a particular Global Security has been repurchased or canceled in whole and not in part, each such Global Security will be returned to or retained and canceled by the Security Registrar in accordance with Section 3.9 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Direct Registration Securities, the aggregate number of CVRs represented by such Global Security will be reduced accordingly and an endorsement will be made on such Global Security by the Security Registrar or by the Depositary at the direction of the Security Registrar to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security will be increased accordingly and an endorsement will be made on such Global Security by the Security Registrar or by the Depositary at the direction of the Security Registrar to reflect such increase.

(vii) (A) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Securities upon receipt of a Company Order in accordance with Section 3.3 hereof or at the Security Registrar's request.

(B) No service charge will be made to a Holder of a beneficial interest in a Global Security or to a Holder of a Direct Registration Security for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith.

(C) All Global Securities and Direct Registration Securities issued upon any registration of transfer or exchange of Global Securities or Direct Registration Securities will be the valid obligations of the Company, evidencing the same rights, and entitled to the same benefits under this CVR Agreement, as the Global Securities or Direct Registration Securities surrendered upon such registration of transfer or exchange.

(D) The Trustee will authenticate Global Securities in accordance with the provisions of Section 3.3 hereof.

Section 3.6 Mutilated, Destroyed, Lost and Stolen Securities .

(a) If (i) any mutilated Global Security is surrendered to the Trustee, or (ii) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Global Security, and there is delivered to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Global Security has been acquired by a bona fide purchaser, the Company shall execute and, upon delivery of a Company Order, the Trustee shall authenticate, as applicable, and deliver, in exchange for any such mutilated Global Security or in lieu of any such destroyed, lost or stolen Global Security, a new CVR, in the form of either a Global Security or a Direct Registration Security, of like tenor and amount of CVRs, bearing a number not contemporaneously outstanding.

(b) In case any such mutilated, destroyed, lost or stolen Global Security has become or is to become finally due and payable within fifteen (15) days, the Company in its discretion may, instead of issuing a new CVR, pay to the Holder of such Security on the Milestone Payment Date all amounts due and payable with respect thereto.

(c) Every new Security issued pursuant to this Section 3.6 in lieu of any destroyed, lost or stolen Global Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Global Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this CVR Agreement equally and proportionately with any and all other Securities duly issued hereunder.

(d) The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Global Securities.

Section 3.7 Payments with respect to CVRs . Payment of any amounts pursuant to the CVRs shall be made in such coin or currency of the United States of America as at the time is legal tender for the payment of public and private debts. The Company may, at its option, pay such amounts by wire transfer or check payable in such money.

Section 3.8 Persons Deemed Owners . Prior to the time of due presentment for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 3.9 Cancellation . All Securities surrendered for payment, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Global Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Global Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this CVR Agreement. All cancelled Global Securities held by the Trustee shall be destroyed and a certificate of destruction shall be issued by the Trustee to the Company, unless otherwise directed by a Company Order.

Section 3.10 CUSIP Numbers . The Company in issuing the CVRs may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices to the Holders as a convenience to the Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the CVRs or as contained in any notices and that reliance may be placed only on the other identification numbers printed on the CVRs, and any such notice shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

ARTICLE 4
THE TRUSTEE

Section 4.1 Certain Duties and Responsibilities .

(a) With respect to the Holders, the Trustee, prior to the occurrence of an Event of Default (as defined in Section 8.1) with respect to the Securities and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this CVR Agreement and no implied covenants shall be read into this CVR Agreement against the Trustee. In case an Event of Default with respect to the Securities has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this CVR Agreement, and use the same degree of care and skill in their exercise, as a reasonably prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) In the absence of bad faith on its part, prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default which may have occurred, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee which conform to the requirements of this CVR Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this CVR Agreement.

(c) No provision of this CVR Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that (i) this Subsection (c) shall not be construed to limit the effect of Subsections (a) and (b) of this Section 4.1 ; (ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and (iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders pursuant to Section 8.9 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this CVR Agreement.

(d) Whether or not therein expressly so provided, every provision of this CVR Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 4.1 .

Section 4.2 Certain Rights of Trustee . Subject to the provisions of Section 4.1 , including the duty of care that the Trustee is required to exercise upon the occurrence of an Event of Default:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties and the Trustee need not investigate any fact or matter stated in the document;

(b) any request or direction or order of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution and the Trustee shall not be liable for any action it takes or omits to take in good faith reliance thereon;

(c) whenever in the administration of this CVR Agreement the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate and the Trustee shall not be liable for any action it takes or omits to take in good faith reliance thereon or an Opinion of Counsel;

(d) the Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this CVR Agreement at the request or direction of any of the Holders pursuant to this CVR Agreement, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document, but the Trustee in its discretion may make such further inquiry or investigation into such facts or matters as it may see fit, and if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the pertinent books and records of the Company, personally or by agent or attorney, as may be reasonably necessary for such inquiry or investigation and in a manner so as to not unreasonably interfere with the normal business operations of the Company or any of its Affiliates; provided, however, that Company shall not be required to provide any books or records to the extent that the provision thereof (i) would, as reasonably determined based on the advice of outside counsel, jeopardize any attorney-client privilege or (ii) would contravene any Law or any contract or agreement to which the Company or any of its Affiliates is subject or bound;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this CVR Agreement; and

(i) the Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice thereof has been received by such Responsible Officer at the offices of the Trustee and such notice references the CVRs and this CVR Agreement and the fact that such notice constitutes notification of default.

Section 4.3 Notice of Default. If a default occurs hereunder with respect to the Securities, the Trustee shall give the Holders notice of any such default actually known to it as and to the extent applicable and provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 8.1(b) with respect to the Securities, no notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 4.3, the term "default" means any event that is, or after notice or lapse of time or both would become, an Event of Default with respect to the Securities.

Section 4.4 Not Responsible for Recitals or Issuance of Securities. The Trustee shall not be accountable for the Company's use of the Securities. The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this CVR Agreement or of the Securities.

Section 4.5 May Hold Securities. The Trustee, any Paying Agent, Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities, and, subject to Sections 4.8 and 4.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

Section 4.6 Money Held in Trust . Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by Law. The Trustee shall be under no liability for interest on any money received by it hereunder, except as otherwise agreed by the Trustee in writing with the Company.

Section 4.7 Compensation and Reimbursement . The Company agrees:

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

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

(c) to indemnify the Trustee and each of its agents, officers, directors and employees (each an " indemnitee ") for, and to hold it harmless against, any loss, liability or reasonable and out-of-pocket expense (including reasonable and out-of-pocket attorneys' fees and expenses) incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the reasonable and out-of-pocket costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Company's payment obligations pursuant to this Section 4.7 shall survive the termination of this CVR Agreement. When the Trustee incurs reasonable and out-of-pocket expenses after the occurrence of an Event of Default specified in Section 8.1(c) or 8.1(d) with respect to the Company, the expenses are intended to constitute expenses of administration under bankruptcy Laws.

Section 4.8 Disqualification; Conflicting Interests .

(a) If applicable, to the extent that the Trustee or the Company determines that the Trustee has a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall immediately notify the Company of such conflict and, within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this CVR Agreement. The Company shall take prompt steps to have a successor appointed in the manner provided in this CVR Agreement.

(b) If the Trustee fails to comply with Section 4.8(a), the Trustee shall, within ten (10) days of the expiration of such ninety (90) day period, transmit a notice of such failure to the Holders in the manner and to the extent provided in the Trust Indenture Act and this CVR Agreement.

(c) If the Trustee fails to comply with Section 4.8(a) after written request therefore by the Company or any Holder, then any Holder of any Security who has been a bona fide Holder for at least six (6) months may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such Trustee and the appointment of a successor Trustee.

Section 4.9 Corporate Trustee Required; Eligibility. There shall at all times be a Trustee hereunder which satisfies the applicable requirements of Sections 310(a)(1) and (5) of the Trust Indenture Act and has a combined capital and surplus of at least one hundred fifty million dollars ($150,000,000). If such corporation publishes reports of condition at least annually, pursuant to Law or to the requirements of a supervising or examining authority, then for the purposes of this Section 4.9, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 4.9, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 4.

Section 4.10 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 4 shall become effective until the acceptance of appointment by the successor Trustee under Section 4.11.

(b) The Trustee, or any trustee or trustees hereafter appointed, may resign at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by an act of the Majority Holders, delivered to the Trustee and to the Company.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 4.8 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six (6) months, or

(ii) the Trustee shall cease to be eligible under Section 4.9 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any case, (A) the Company, by a Board Resolution or an action of the chief executive officer of the Company, may remove the Trustee, or (B) the Holder of any Security who has been a bona fide Holder of a Security for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution or an action of the chief executive officer of the Company, shall promptly appoint a successor Trustee. If, within one year after any removal by the Majority Holders, a successor Trustee shall be appointed by act of the Majority Holders delivered to the Company and the retiring Trustee, then the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with Section 4.11 , become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Majority Holders and accepted appointment within sixty (60) days after the retiring Trustee tenders its resignation or is removed, the retiring Trustee may, or, the Holder of any Security who has been a bona fide Holder for at least six (6) months may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Company fails to send such notice within ten (10) days after acceptance of appointment by a successor Trustee, it shall not be a default hereunder but the successor Trustee shall cause the notice to be mailed at the expense of the Company.

Section 4.11 Acceptance of Appointment of Successor .

(a) Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, upon request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

(b) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 4 .

Section 4.12 Merger, Conversion, Consolidation or Succession to Business . Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, by sale or otherwise shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article 4 , without the execution or filing of any paper or any further act on the part of any of the Parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion, sale or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities; and such certificate shall have the full force which it is anywhere in the Securities or in this CVR Agreement provided that the certificate of the Trustee shall have; provided that the right to adopt the certificate of authentication of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 4.13 Preferential Collection of Claims Against Company . If and when the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company (or any other obligor upon the Securities), excluding any creditor relationship set forth in Section 311(b) of the Trust Indenture Act, if applicable, the Trustee shall be subject to the applicable provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

ARTICLE 5
HOLDERS' LISTS AND REPORTS BY THE TRUSTEE AND COMPANY

Section 5.1 Company to Furnish Trustee Names and Addresses of Holders . The Company will furnish or cause to be furnished to the Trustee (a) promptly after the issuance of the Securities, and semi-annually thereafter, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a recent date, and (b) at such times as the Trustee may request in writing, within thirty (30) days after receipt by the Company of any such request, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the time such list is furnished; provided , however , that if and so long as the Trustee shall be the Security Registrar, no such list need be furnished.

Section 5.2 Preservation of Information; Communications to Holders .

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of the Holders contained in the most recent list furnished to the Trustee as provided in Section 5.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 5.1 upon receipt of a new list so furnished.

(b) The rights of the Holders to communicate with other Holders with respect to their rights under this CVR Agreement and the corresponding rights and privileges of the Trustee shall be as provided by Section 312(b)(2) of the Trust Indenture Act, if applicable.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee shall be deemed to be in violation of Law or held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act (if applicable) regardless of the source from which such information was derived.

Section 5.3 Reports by Trustee .

(a) Within sixty (60) days after December 31 of each year commencing with the December 31 following the date of this CVR Agreement, the Trustee shall transmit to all Holders such reports concerning the Trustee and its actions under this CVR Agreement as may be required pursuant to the Trust Indenture Act to the extent and in the manner provided pursuant thereto. The Trustee shall also comply with Section 313(b)(2) of the Trust Indenture Act, if applicable. The Trustee shall also transmit by mail all reports as required by Section 313(c) of the Trust Indenture Act, if applicable.

(b) A copy of each such report shall, at the time of such transmission to the Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities are listed, with the Commission and also with the Company. The Company will promptly notify the Trustee when the Securities are listed on any stock exchange.

Section 5.4 Reports by Company .

(a) The Company shall file with the Trustee, within fifteen (15) days after the Company files or furnishes the same with the Commission, copies of an annual report filed on Form 10-K or a quarterly reports filed on Form 10-Q and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act (such annual and quarterly reports and required information, documents and other reports, together the " Exchange Act Documents ").

(b) Delivery of the reports, information and documents described in Section 5.4(a) shall not constitute constructive notice of any information contained therein or determinable there from, including the Company's compliance with any of its covenants or other obligations hereunder as to which the Trustee is entitled to rely exclusively on Officer's Certificates.

ARTICLE 6
AMENDMENTS

Section 6.1 Amendments Without Consent of Holders . Without the consent of any Holders, the Company and the Trustee, at any time and from time to time, may enter into one or more amendments hereto or to the Securities, for any of the following purposes:

(a) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Securities any property or assets;

(b) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities;

(c) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as the Company and the Trustee shall consider to be for the protection of the Holders of Securities, and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this CVR Agreement as herein set forth; provided , that in respect of any such additional covenant, restriction, condition or provision, such amendment may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such an Event of Default or may limit the remedies available to the Trustee upon such an Event of Default or may limit the right of the Majority Holders to waive such an Event of Default;

(d) to cure any ambiguity, or to correct or supplement any provision herein or in the Securities which may be defective or inconsistent with any other provision herein; provided, that such provisions shall not materially reduce the benefits of this CVR Agreement or the Securities to the Holders;

(e) to make any other provisions with respect to matters or questions arising under this CVR Agreement; provided , that such provisions shall not adversely affect the interests of the Holders;

(f) to make any amendments or changes necessary to comply or maintain compliance with the Trust Indenture Act, if applicable; or

(g) make any other change that does not adversely affect the interests of the Holders.

Promptly following any amendment of this CVR Agreement or the Securities in accordance with this Section 6.1 , the Trustee shall notify the Holders of the Securities of such amendment; provided that any failure so to notify the Holders shall not affect the validity of such amendment.

Section 6.2 Amendments with Consent of Holders . With the consent of the Majority Holders, by Act of said Holders delivered to the Company and the Trustee, the Company (when authorized by a Board Resolution or the chief executive officer of the Company) and the Trustee may enter into one or more amendments hereto or to the Securities for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this CVR Agreement or to the Securities or of modifying in any manner the rights of the Holders under this CVR Agreement or to the Securities; provided , however , that no such amendment shall, without the consent of the Holder of each Outstanding Security affected thereby:

(a) modify in a manner adverse to the Holders (i) any provision contained herein with respect to the termination of this CVR Agreement or the Securities, (ii) the time for payment and amount of the Milestone Payment, or otherwise extend the time for payment of the Securities or reduce the amounts payable in respect of the Securities or modify any other payment term or payment date;

(b) reduce the number of CVRs, the consent of whose Holders is required for any such amendment; or

(c) modify any of the provisions of this Section 6.2 , except to increase the percentage of Holders from whom consent or approval is required or to provide that certain other provisions of this CVR Agreement cannot be modified or waived without the consent of the Holder of each Security affected thereby.

It shall not be necessary for any Act of Holders under this Section 6.2 to approve the particular form of any proposed amendment, but it shall be sufficient if such Act shall approve the substance thereof.

Section 6.3 Execution of Amendments . In executing any amendment permitted by this Article 6 , the Trustee (subject to Section 4.1) shall be fully protected in relying upon an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this CVR Agreement. The Trustee shall execute any amendment authorized pursuant to this Article 6 if the amendment does not adversely affect the Trustee's own rights, duties or immunities under this CVR Agreement or otherwise. Otherwise, the Trustee may, but need not, execute such amendment.

Section 6.4 Effect of Amendments; Notice to Holders .

(a) Upon the execution of any amendment under this Article, this CVR Agreement and the Securities shall be modified in accordance therewith, and such amendment shall form a part of this CVR Agreement and the Securities for all purposes; and every Holder of Securities theretofore or thereafter authenticated, as applicable, and delivered hereunder shall be bound thereby.

(b) Promptly after the execution by the Company and the Trustee of any amendment pursuant to the provisions of this Article 6 , the Company shall mail a notice thereof by first class mail to the Holders of Securities at their addresses as they shall appear on the Security Register, setting forth in general terms the substance of such amendment. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment.

Section 6.5 Conformity with Trust Indenture Act . Every amendment executed pursuant to this Article 6 shall conform to the applicable requirements of the Trust Indenture Act, if any.

Section 6.6 Reference in Securities to Amendments . If an amendment changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. Global Securities authenticated and delivered after the execution of any amendment pursuant to this Article 6 may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such amendment. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee, on the on hand, and the Board of Directors or the chief executive officer of the Company, on the other hand, to any such amendment may be prepared and executed by the Company, as applicable, and authenticated, as applicable, and delivered by the Trustee in exchange for Outstanding Securities. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

ARTICLE 7
COVENANTS

Section 7.1 Payment of Amounts, if any, to Holders . The Company will duly and punctually pay the amounts, if any, on the Securities in accordance with the terms of this CVR Agreement. Such amounts shall be considered paid on the Milestone Payment Date if on or prior to such date the Company makes, or causes to be made, the payment required pursuant to Section 3.1(c) of this CVR Agreement. Notwithstanding any other provision of this CVR Agreement, the Company or any of its Affiliates, the Trustee or the Paying Agent, shall be entitled to deduct and withhold, or cause to be deducted and withheld, from any amounts payable or otherwise deliverable pursuant to this CVR Agreement to any Person, such amounts as are required to be deducted and withheld therefrom under the Code, or any provision of state, local or foreign Tax Law. To the extent that amounts are so deducted and withheld by the Company or any of its Affiliates, the Trustee or the Paying Agent, such withheld amounts shall be (a) paid over to the applicable Governmental Entity in accordance with applicable Law and (b) treated for all purposes of this CVR Agreement as having been paid to the Person in respect of which such deduction and withholding was made by the Company or any of its Affiliates, the Trustee or the Paying Agent, as the case may be. The consent of Holder shall not be required for any such withholding.

Section 7.2 Maintenance of Office or Agency .

(a) As long as any of the Securities remain Outstanding, the Company will maintain in the Borough of Manhattan, The City of New York, an office or agency (i) where Securities may be presented or surrendered for payment, (ii) where Securities may be surrendered for registration of transfer or exchange and (iii) where notices and demands to or upon the Company in respect of the Securities and this CVR Agreement may be served. The office or agency of the Trustee at [Address], New York, New York [Zip Code] shall be such office or agency of the Company, unless the Company shall designate and maintain some other office or agency for one or more of such purposes. The Company or any of its Subsidiaries may act as Paying Agent, registrar or transfer agent; provided that such Person shall take appropriate actions to avoid the commingling of funds. The Company will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Company shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Company may from time to time designate one or more other offices or agencies (in or outside of The City of New York) where the Securities may be presented or surrendered for any or all such purposes, and may from time to time rescind such designation; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such office or agency.

Section 7.3 Money for Security Payments to Be Held in Trust .

(a) If the Company or any of its Subsidiaries shall at any time act as the Paying Agent, it will, on or before the Milestone Payment Date segregate and hold in trust for the benefit of the Holders all sums held by such Paying Agent for payment on the Securities until such sums shall be paid to the Holders as herein provided, and will promptly notify the Trustee of any default by the Company in making payment on the Securities.

(b) Whenever the Company shall have one or more Paying Agents for the Securities, it will, on or before the Milestone Payment Date deposit with a Paying Agent a sum in same day funds sufficient to pay the amount, if any, so becoming due; such sum to be held in trust for the benefit of the Persons entitled to such amount, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of such action or any failure so to act.

(c) The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 7.3 , that (i) such Paying Agent will hold all sums held by it for the payment of any amount payable on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will notify the Trustee of the sums so held and (ii) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Securities) to make any payment on the Securities when the same shall be due and payable.

(d) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment on any Security and remaining unclaimed for one year after the Milestone Payment Date shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease.

Section 7.4 Certain Purchases and Sales . Nothing contained herein shall prohibit the Company or any of its Subsidiaries or Affiliates from acquiring in open market transactions, private transactions or otherwise, any Securities.

Section 7.5 Books and Records . During the term of this Agreement and for a period of three (3) years after the Termination Date, the Company shall use commercially reasonable efforts to keep, and shall cause its Subsidiaries to use commercially reasonable efforts to keep, true, complete and accurate records in reasonably sufficient detail to enable the Holders to determine if the Company has complied with its obligations under this CVR Agreement.

Section 7.6 Listing of CVRs . The Company hereby covenants and agrees to use reasonable best efforts to cause the Securities to be approved for listing (subject to notice of issuance) for trading on the New York Stock Exchange or other national securities exchange and will use its reasonable best efforts to maintain such listing for so long as any CVRs remain Outstanding.

Section 7.7 Product Transfer . If the Company or its Affiliates, directly or indirectly, by a sale or swap of assets, merger, reorganization, joint venture, lease, license or any other transaction or arrangement, sells, transfers, conveys or otherwise disposes of its respective rights in and to any Product to a third party (other than the Company or any of its Subsidiaries), then the applicable Milestone for such Product (e.g., if the Product is BB2121, then the BB2121 Milestone) shall be deemed to have been satisfied for all purposes under this CVR Agreement as of the earlier of the entry into a definitive agreement with respect to, and the consummation of, the transaction or arrangement involving such sale, transfer, conveyance or other disposition; provided , that if such sale, transfer, conveyance or other disposition is permitted by Section 9.1 , then Section 9.1 shall govern. For the purposes of clarification, and subject to Section 7.8 , the Company may use contract research organizations, contract manufacturing organizations, contract sales organizations, subcontractors and distributors in the ordinary course of business to perform research, development, manufacturing and commercialization activities (including granting an appropriate sublicense to the extent necessary), without triggering the applicable Milestone.

Section 7.8 Diligent Efforts . The Company shall use Diligent Efforts to achieve the Milestone.

Section 7.9 Confidentiality . The Trustee and the Holders hereby agree that any confidential or non-public information they receive from or on behalf of the Company or any Affiliate of the Company, which receipt arises out of the transactions contemplated by this CVR Agreement (the " Confidential Information "), shall: (a) not be used for any purpose other than for purposes permitted under this CVR Agreement; (b) not be used directly or indirectly in any way that is for competitive purposes; and (c) not be disclosed by, and be kept confidential by, such Trustee and the Holders and its directors, officers, members, managers, employees, affiliates and agents (collectively, " Representatives "); provided , however , that any such Confidential Information may be disclosed only to their Representatives who (i) need to know such Confidential Information and (ii) are bound in writing to a non-disclosure agreement no less restrictive than this Section 7.9 . It is understood that such Representatives shall be informed by the Trustee or the applicable Holder of the confidential nature of such Confidential Information, and that the Trustee or such Holder, as applicable, shall be responsible for any disclosure or use made by its Representatives in breach of obligations under this CVR Agreement to the same extent as if such disclosure or use had been made directly by the Trustee or such Holder, as applicable. Each of the Trustee and the Holders will as soon as practicable notify the Company of any breach of this CVR Agreement of which they become aware, and will use commercially reasonable efforts to assist and cooperate with the Company in minimizing the consequences of such breach. "Confidential Information" shall not include any information that is (A) publicly available other than because of or related to any disclosure by the Trustee or the Holders or any of their respective Representatives or (B) is lawfully disclosed to the Trustee or Holders by sources (other than the Company or its Affiliates) rightfully in possession of the Confidential Information on a non-confidential basis. If the Trustee, Holders or their respective Representatives are legally required or requested to disclose any Confidential Information, they will in advance of such disclosure, unless otherwise prohibited by Law, promptly notify the Company in writing of such request or requirement so that the Company may seek to avoid or minimize the required disclosure and/or obtain an appropriate protective order or other appropriate relief to ensure that any Confidential Information so disclosed is maintained in confidence to the maximum extent possible by the person receiving the disclosure, or, in the Company's discretion, to waive compliance with the provisions of this CVR Agreement. In any such case, the Trustee and the Holders agree to cooperate and use reasonable efforts to avoid or minimize the required disclosure and/or obtain such protective order or other relief. If, in the absence of a protective order or the receipt of a waiver hereunder, the Trustee, Holders or their respective Representatives are legally obligated to disclose any Confidential Information, they will disclose only so much thereof to the party compelling disclosure as they believe in good faith, on the basis of advice of counsel, is required by Law. The Trustee and Holders shall give the Company prior written notice of the specific Confidential Information that they believe they are required to disclose under such circumstances. All Confidential Information disclosed by or on behalf of the Company or any of its Affiliates shall be, and shall remain, the property of the Company or such Affiliate.

Section 7.10 Non-Use of Name . Neither the Trustee nor the Holders shall use the name, trademark, trade name, or logo of the Company, its Affiliates or their respective employees, agents or representatives in any publicity or news release relating to this CVR Agreement or its subject matter, without the prior express written permission of the Company.

Section 7.11 Notice of Default . The Company shall file with the Trustee written notice of the occurrence of any Event of Default or other default under this CVR Agreement within five (5) Business Days of its becoming aware of such Event of Default or other default.

ARTICLE 8
REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT

Section 8.1 Event of Default Defined; Waiver of Default . " Event of Default " with respect to the Securities, means each one of the following events which shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of Law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment by the Company pursuant to the terms of this CVR Agreement of all or any part of the Milestone Payment after a period of ten (10) Business Days after the Milestone Payment shall become due and payable on the Milestone Payment Date; or

(b) material default in the performance, or breach in any material respect, of any covenant or warranty of the Company in respect of the Securities (other than a covenant or warranty in respect of the Securities, a default in whose performance or whose breach is elsewhere in this Section 8.1 specifically dealt with), and continuance of such default or breach for a period of ninety (90) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Majority Holders, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(c) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for any substantial part of its property or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days; or

(d) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such Law, or consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for any substantial part of its property, or make any general assignment for the benefit of creditors.

If an Event of Default described above occurs and is continuing, then, and in each and every such case, either the Trustee by notice in writing to the Company or the Trustee upon the written request of the Majority Holders by notice in writing to the Company (and to the Trustee if given by the Majority Holders), shall bring suit to protect the rights of the Holders, including to obtain payment for any amounts then due and payable, which amounts shall bear interest at the Default Interest Rate from the date such amounts were due and payable hereunder until payment is made to the Trustee.

The foregoing provisions of this Section 8.1 , however, are subject to the condition that if, at any time after the Trustee shall have begun such suit, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all amounts which shall have become due (with interest upon such overdue amount at the Default Interest Rate to the date of such payment or deposit) and such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred and all advances made, by the Trustee, and if any and all Events of Default under this CVR Agreement shall have been cured, waived or otherwise remedied as provided herein, then and in every such case the Majority Holders, by written notice to the Company and to the Trustee, may waive all defaults with respect to the Securities, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereof.

Section 8.2 Collection by the Trustee; the Trustee May Prove Payment Obligations . The Company covenants that in case default shall be made in the payment of all or any part of the Securities when the same shall have become due and payable, whether at the Milestone Payment Date or otherwise, then upon demand of the Trustee, the Company will pay to the Trustee for the benefit of the Holders of the Securities the whole amount that then shall have become due and payable on all Securities (with interest from the date due and payable to the date of such payment upon the overdue amount at the Default Interest Rate); and in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee and each predecessor Trustee, their respective agents, attorneys and counsel, and any expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of its negligence, bad faith or willful misconduct.

The Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this CVR Agreement or in aid of the exercise of any power granted herein, or to enforce any other remedy.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at Law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon such Securities and collect in the manner provided by Law out of the property of the Company or other obligor upon such Securities, wherever situated, the moneys adjudged or decreed to be payable.

In any judicial proceedings relative to the Company or other obligor upon the Securities, irrespective of whether any amount is then due and payable with respect to the Securities, the Trustee is authorized:

(a) to file and prove a claim or claims for the whole amount owing and unpaid in respect of the Securities, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence, bad faith or willful misconduct) and of the Holders allowed in any judicial proceedings relative to the Company or other obligor upon the Securities, or to their respective property;

(b) unless prohibited by and only to the extent required by applicable Law, to vote on behalf of the Holders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or person performing similar functions in comparable proceedings; and

(c) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Holders and of the Trustee on their behalf; and any trustee, receiver, or liquidator, custodian or other similar official is hereby authorized by each of the Holders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Holders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of its negligence, bad faith or willful misconduct, and all other amounts due to the Trustee or any predecessor Trustee pursuant to Section 4.6 . To the extent that such payment of reasonable compensation, expenses, disbursements, advances and other amounts out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, moneys, securities and other property which the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities, or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person.

All rights of action and of asserting claims under this CVR Agreement, or under any of the Securities, may be enforced by the Trustee without the possession of any of the Securities or the production thereof and any trial or other proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee, each predecessor Trustee and their respective agents and attorneys, shall be for the ratable benefit of the Holders.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this CVR Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders, and it shall not be necessary to make any Holders of such Securities parties to any such proceedings.

Section 8.3 Application of Proceeds . Any monies collected by the Trustee pursuant to this Article 8 in respect of any Securities shall be applied in the following order at the date or dates fixed by the Trustee upon presentation of the several Securities in respect of which monies have been collected and stamping (or otherwise noting) thereon the payment in exchange for the presented Securities if only partially paid or upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses in respect of which monies have been collected, including reasonable compensation to the Trustee and each predecessor Trustee and their respective agents and attorneys and of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of its negligence, bad faith or willful misconduct, and all other amounts due to the Trustee or any predecessor Trustee pursuant to Section 4.7 ;

SECOND: To the payment of the whole amount then owing and unpaid upon all the Securities, with interest at the Default Interest Rate on all such amounts, and in case such monies shall be insufficient to pay in full the whole amount so due and unpaid upon the Securities, then to the payment of such amounts without preference or priority of any security over any other Security, ratably to the aggregate of such amounts due and payable; and

THIRD: To the payment of the remainder, if any, to the Company or any other person lawfully entitled thereto.

Section 8.4 Suits for Enforcement . In case an Event of Default has occurred, has not been waived and is continuing, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this CVR Agreement by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at Law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this CVR Agreement or in aid of the exercise of any power granted in this CVR Agreement or to enforce any other legal or equitable right vested in the Trustee by this CVR Agreement or by Law.

Section 8.5 Restoration of Rights on Abandonment of Proceedings . In case the Trustee or any Holder shall have proceeded to enforce any right under this CVR Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or to such Holder, then and in every such case the Company and the Trustee and the Holders shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Holders shall continue as though no such proceedings had been taken.

Section 8.6 Limitations on Suits by Holders . Subject to the rights of the holders under Section 8.7 , no Holder of any Security shall have any right by virtue or by availing of any provision of this CVR Agreement to institute any action or proceeding at Law or in equity or in bankruptcy or otherwise upon or under or with respect to this CVR Agreement, or for the appointment of a trustee, receiver, liquidator, custodian or other similar official or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless also the Majority Holders shall have made written request upon the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby and the Trustee for fifteen (15) days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 8.9 . For the protection and enforcement of the provisions of this Section 8.6 , each and every Holder and the Trustee shall be entitled to such relief as can be given either at Law or in equity.

Section 8.7 Unconditional Right of Holders to Institute Certain Suits . Notwithstanding any other provision in this CVR Agreement and any provision of any Security, the right of any Holder of any Security to receive payment of the amounts payable in respect of such Security on or after the respective due dates expressed in such Security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 8.8 Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default .

(a) Except as provided in Section 8.6 , no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by Law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at Law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

(b) No delay or omission of the Trustee or of any Holder to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and, subject to Section 8.6 , every power and remedy given by this CVR Agreement or by Law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 8.9 Control by Holders .

(a) The Majority Holders shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any power conferred on the Trustee with respect to the Securities by this CVR Agreement; provided that such direction shall not be otherwise than in accordance with Law and the provisions of this CVR Agreement; and provided further that (subject to the provisions of Section 4.1) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, shall determine that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors, the executive committee, or a committee of directors or Responsible Officers of the Trustee shall determine that the action or proceedings so directed would involve the Trustee in personal liability or if the Trustee in good faith shall so determine that the actions or forbearances specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders of the Securities not joining in the giving of said direction.

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

Section 8.10 Waiver of Past Defaults .

(a) In the case of a default or an Event of Default specified in clause (b), (c) or (d) of Section 8.1 , the Majority Holders may waive any such default or Event of Default, and its consequences except a default in respect of a covenant or provisions hereof which cannot be modified or amended without the consent of the Holder of each Security affected. In the case of any such waiver, the Company, the Trustee and the Holders of the Securities shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

(b) Upon any such waiver, such default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured, and not to have occurred for every purpose of this CVR Agreement; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 8.11 The Trustee to Give Notice of Default, But May Withhold in Certain Circumstances . The Trustee shall transmit to the Holders, as the names and addresses of such Holders appear on the Security Register (as provided under Section 313(c) of the Trust Indenture Act, if applicable), notice by mail of all defaults which have occurred and are known to the Trustee, such notice to be transmitted within ninety (90) days after the occurrence thereof, unless such defaults shall have been cured before the giving of such notice (the term “default” for the purposes of this Section being hereby defined to mean any event or condition which is, or with notice or lapse of time or both would become, an Event of Default); provided that, except in the case of default in the payment of the amounts payable in respect of any of the Securities, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors or trustees and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 8.12 Right of Court to Require Filing of Undertaking to Pay Costs . All Parties to this CVR Agreement agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this CVR Agreement or in any suit against the Trustee for any action taken, suffered or omitted by it as the Trustee, the filing by any party litigant in such suit of an undertaking to pay the reasonable out-of-pocket costs of such suit, and that such court may in its discretion assess reasonable out-of-pocket costs, including reasonable out-of-pocket attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 8.12 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder or group of Holders holding in the aggregate more than ten percent (10%) of the Securities Outstanding or to any suit instituted by any Holder for the enforcement of the payment of any Security on or after the due date expressed in such Security.

ARTICLE 9
CONSOLIDATION, MERGER, SALE OR CONVEYANCE

Section 9.1 Company May Consolidate, etc., on Certain Terms . The Company covenants that it will not merge or consolidate with or into any other Person or sell or convey all or substantially all of its assets to any Person, unless (a) either (i) the Company shall be the continuing Person or (ii) the successor Person, or the Person that acquires by sale or conveyance substantially all the assets of the Company shall be a Person organized under the Laws of the United States of America or any State thereof, any member of the European Union or the United Kingdom and shall expressly assume, by an assignment and assumption agreement, executed and delivered to the Trustee, in substantially the form attached hereto as Annex B , the due and punctual payment of the Milestone Payment and the due and punctual performance and observance of all covenants and conditions of this CVR Agreement to be performed or observed by the Company and (b) the Company, such successor Person or Person that acquires by sale or conveyance substantially all the assets of the Company, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition in any material respect.

Section 9.2 Successor Person Substituted .

(a) In case of an assumption pursuant to Section 9.1(a)(ii) , such assuming Person shall succeed to and be substituted for the Company with the same effect as if it had been named herein. Such assuming Person may cause to be signed, and may issue either in its own name (or, if it is the successor to the Company or substantially all assets of the Company, in the name of the Company prior to such succession) any or all of the Securities issuable hereunder, in the case of Global Securities, which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation instead of the Company and subject to all the terms, conditions and limitations in this CVR Agreement prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered to the Trustee for authentication, and any Securities which such assuming Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this CVR Agreement as the Securities theretofore or thereafter issued in accordance with the terms of this CVR Agreement as though all of such Securities had been issued at the date of the execution hereof.

(b) In case of any such assumption, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

(c) In the event of any such assumption, the assigning Person shall be discharged from all obligations and covenants under this CVR Agreement and the Securities and may be liquidated and dissolved.

Section 9.3 Opinion of Counsel to the Trustee . The Trustee, subject to the provisions of Sections 4.1 and 4.2 , shall receive an Officer's Certificate and Opinion of Counsel, prepared in accordance with Section 1.2 and Section 1.3 , as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption, and any such liquidation or dissolution, complies with the applicable provisions of this CVR Agreement, and if a supplemental agreement is required in connection with such transaction, such supplemental agreement complies with this Article and that there has been compliance with all conditions precedent herein provided for or relating to such transaction.

Section 9.4 Successors . All covenants, provisions and agreements in this CVR Agreement by or for the benefit of the Company, the Trustee or the Holders shall bind and inure to the benefit of their respective successors, assigns, heirs and personal representatives, whether so expressed or not. The Company may assign this CVR Agreement without the prior written consent of the other Parties to this CVR Agreement to one or more of its direct or indirect Subsidiaries, provided , however , that, subject to Section 9.2(a) and (b) , in the event of any such assignment the Company shall remain subject to its obligations and covenants hereunder, including but not limited to its obligation to make the Milestone Payment.

ARTICLE 10
SUBORDINATION

Section 10.1 Agreement to Subordinate . The Company agrees, and each Holder by accepting a Security hereunder agrees, that the Milestone Payment, all other obligations under this CVR Agreement and the Securities and any rights or claims relating thereto (collectively, the " Junior Obligations ") are subordinated in right of payment, to the extent and in the manner provided in this Article 10 , to the prior payment in full in cash or cash equivalents of all Senior Obligations of the Company (whether outstanding on the date hereof or hereafter created, incurred, assumed or guaranteed), and that the subordination is for the benefit of the holders of such Senior Obligations.

Section 10.2 Liquidation; Dissolution; Bankruptcy . Upon any distribution to creditors of the Company in a liquidation or dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property, in an assignment for the benefit of creditors or any marshaling of the Company's assets and liabilities:

(a) holders of Senior Obligations will be entitled to receive payment in full in cash or cash equivalents of all Senior Obligations of the Company (including interest after the commencement of any bankruptcy proceeding at the rate specified in the applicable Senior Obligation, whether or not permitted under such bankruptcy proceedings) before the Holders will be entitled to receive any payment of any kind with respect to the Junior Obligations; and

(b) until all Senior Obligations of the Company (as provided in clause (a) above) are paid in full in cash or cash equivalents, any distribution to which Holders would be entitled but for this Article 10 will be made to holders of Senior Obligations of the Company, as their interests may appear.

Section 10.3 Default on Senior Obligations . The Company may not make any payment or distribution to any Holder in respect of Junior Obligations or acquire from any Holder for cash or property any Junior Obligations:

(a) if any default on any Senior Obligations exceeding twenty-five million dollars ($25,000,000) in aggregate principal amount would occur as a result of such payment, distribution or acquisition;

(b) during the continuance of any payment default in respect of any Senior Obligations (after expiration of any applicable grace period) exceeding twenty-five million dollars ($25,000,000) in aggregate principal amount;

(c) if the maturity of any Senior Obligations representing more than twenty-five million dollars ($25,000,000) in aggregate principal amount is accelerated in accordance with its terms and such acceleration has not been rescinded; or

(d) following the occurrence of any default (other than a payment default, and after the expiration of any applicable grace period) with respect to any Senior Obligations with an aggregate principal amount of more than twenty-five million dollars ($25,000,000), the effect of which is to permit the holders of such Senior Obligations (or a trustee or agent acting on their behalf) to cause, with the giving of notice if required, the maturity of such Senior Obligations to be accelerated, for a period commencing upon the receipt by the Trustee (with a copy to the Company) of a written notice of such default from the representative of the holders of such Senior Obligations and ending when such Senior Obligations are paid in full in cash or cash equivalents or, if earlier, when such default is cured or waived.

Section 10.4 When Distribution Must Be Paid Over .

(a) In the event that the Trustee or any Holder receives any payment of any Junior Obligations at a time when such payment is prohibited by this Article 10 , such payment will be held by the Trustee or such Holder, in trust for the benefit of, and will be paid forthwith over and delivered, upon written request, to, the holders of Senior Obligations of the Company as their interests may appear or their representative under the agreement, indenture or other document (if any) pursuant to which such Senior Obligations may have been issued, as their respective interests may appear, for application to the payment of all such Senior Obligations remaining unpaid to the extent necessary to pay such Senior Obligations in full in accordance with their terms, after giving effect to any concurrent payment or distribution to or for the holders of Senior Obligations.

(b) Any amount received by any Holder as a result of direct or indirect credit support for the Junior Obligations from any Affiliate of the Company shall be treated as payments received by such Holder from the Company that are subject to the provisions of this Article 10 .

(c) With respect to the holders of Senior Obligations, the Trustee undertakes to perform only those obligations on the part of the Trustee as are specifically set forth in this Article 10 , and no implied covenants or obligations with respect to the holders of Senior Obligations will be read into this CVR Agreement against the Trustee. The Trustee will not be deemed to owe any fiduciary duty to the holders of Senior Obligations, and will not be liable to any such holders if the Trustee pays over or distributes to or on behalf of Holders or the Company or any other Person money or assets to which any holders of Senior Obligations are then entitled by virtue of this Article 10 , except if such payment is made as a result of the willful misconduct or gross negligence of the Trustee.

Section 10.5 Notice by Company . The Company will promptly notify the Trustee of any facts known to the Company that would cause a payment of any Junior Obligations to violate this Article 10 , but failure to give such notice will not affect the subordination of the Junior Obligations to the Senior Obligations as provided in this Article 10 .

Section 10.6 Subordination Effective Notwithstanding Deficiencies with Respect to Senior Obligations: Waiver of Right to Contest Senior Obligation: Reinstatement of Subordination Provisions .

(a) The Holders hereby agree that subordination provisions contained in this Article 10 are unconditional, irrespective of the validity, regularity or enforceability of the Senior Obligations, the absence of any action to enforce the same, any waiver or consent by any holder of Senior Obligations with respect to any provisions thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense. Without limiting the foregoing, and notwithstanding anything to the contrary contained elsewhere in this CVR Agreement, in the event that the amount of Senior Obligations are reduced or diminished for any reason (other than as a result of the payment in cash or cash equivalents thereof), whether because of the applicability of fraudulent conveyance or other applicable Laws, or any other invalidity or limitation on the amount of Senior Obligations, the subordination provisions thereof shall apply to the full amount of Senior Obligations (without giving effect to any reduction, invalidity or diminution thereof), and the turnover provisions hereunder shall be fully enforceable with respect to the full amount of Senior Obligations (without giving effect to any such reduction, invalidity or diminution thereof), even if the effect thereof is that there will be no (or a limited amount of) Senior Obligations to which the Junior Obligations are subrogated after the payment in full in cash of any of the remaining Senior Obligations (without giving effect to any reductions, invalidity or diminution thereof, except for reductions as a result of payments thereof in cash or cash equivalents).

(b) The Trustee and the Holders agree that they shall not (and hereby waive any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any proceeding commenced by or against any Person under any provision of Title 11 of the United States Code, as now and hereinafter in effect, or any successor statute or under any other state or federal bankruptcy or insolvency Law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief), the validity or enforceability of the Senior Obligations.

(c) If any payment made or in respect to the Senior Obligations must be disgorged or returned for any reason, the Senior Obligations shall be reinstated hereunder and for all purposes of this Article 10 (including the turnover provisions hereof) such payment shall be deemed to have never been made with respect to the Senior Obligations.

Section 10.7 Subrogation . After all Senior Obligations are paid in full in cash or cash equivalents and until the Junior Obligations are paid in full, Holders will be subrogated to the rights of holders of Senior Obligations to receive distributions applicable to Senior Obligations to the extent that distributions otherwise payable to the Holders have been applied to the payment of Senior Obligations. The Holders by accepting the Securities acknowledge that to the extent that the Senior Obligations are determined to be unenforceable, or the Senior Obligations are subordinated to other obligations of the Company, such subrogation rights may be impaired.

Section 10.8 Relative Rights . This Article 10 defines the relative rights of Holders and holders of Senior Obligations. Nothing in this CVR Agreement will:

(a) impair, as between the Company and Holders, the obligations of the Company under this CVR Agreement and the Securities; or

(b) affect the relative rights of Holders and creditors of the Company other than their rights in relation to holders of Senior Obligations.

(c) If the Company fails because of this Article 10 to pay any amounts due in respect of the Securities on a due date in violation of Section 8.1 , the failure is still an Event of Default.

Section 10.9 Subordination May Not Be Impaired by Company . No right of any holder of Senior Obligations to enforce the subordination of the Junior Obligations may be impaired by any act or failure to act by the Company or any Holder or by the failure of the Company or any Holder to comply with this CVR Agreement.

Section 10.10 Distribution or Notice to Representative . Whenever a distribution is to be made or a notice given to holders of Senior Obligations, the distribution may be made and the notice given to their representative in accordance with the terms of the instrument or other agreement governing such Senior Obligations. Upon any payment or distribution of assets of the Company referred to in this Article 10 , the Trustee and the Holders will be entitled to rely upon any order or decree made by any court of competent jurisdiction or upon any certificate of such representative or of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Obligations and other obligations of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 10 .

Section 10.11 Rights of the Trustee . Notwithstanding the provisions of this Article 10 or any other provision of this CVR Agreement, the Trustee will not be charged with knowledge of the existence of any facts that would prohibit the making of any payment or distribution by the Trustee, and the Trustee may continue to make payments on the Securities, unless the Trustee has received at its address for notice specified in Section 1.5 at least five (5) Business Days prior to the date of such payment written notice of facts that would cause the payment of any Junior Obligations to violate this Article 10 . Only the Company or a representative of Senior Obligations may give the notice. Nothing in this Article 10 will impair the claims of, or payments to, the Trustee under or pursuant to Section 4.7 . The Trustee in its individual or any other capacity may hold Senior Obligations with the same rights it would have if it were not the Trustee.

Section 10.12 Authorization to Effect Subordination . Each Holder, by the Holder's acceptance of the Securities, authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 10 , and appoints the Trustee to act as such Holder's attorney-in-fact for any and all such purposes. If the Trustee (or any other Person acting on behalf of and at the direction of the Majority Holders) does not file a proper proof of claim or proof of debt in the form required in any proceeding referred to in Section 8.2 hereof at least thirty (30) days before the expiration of the time to file such claim, the representatives of the Senior Obligations are hereby authorized to file an appropriate claim for and on behalf of the Holders of the Securities.

Section 10.13 Amendments . The provisions of this Article 10 are expressly made for the benefit of the holders from time to time of the Senior Obligations, and may not be amended or modified without the written consent of the representatives of the holders of all Senior Obligations.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this CVR Agreement to be duly executed, all as of the day and year first above written.

BRISTOL-MYERS SQUIBB COMPANY

By: _____
Name:
Title:

[_____], as the Trustee

By: _____
Name:
Title:

[Signature Page to CVR Agreement]

ANNEX A

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE CONTINGENT VALUE RIGHTS AGREEMENT (THE " CVR AGREEMENT ") HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF. THIS SECURITY IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE CVR AGREEMENT, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE CVR AGREEMENT.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DIRECT REGISTRATION FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (" DTC ") TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

BRISTOL-MYERS SQUIBB COMPANY

No.	Certificate for	Contingent Value Rights
CUSIP	[_____]	

This certifies that _____, or registered assigns (the " Holder "), is the registered holder of the number of Contingent Value Rights (" CVRs " or " Securities ") set forth above. Each CVR entitles the Holder, subject to the provisions contained herein and in the CVR Agreement referred to on the reverse hereof, to payments from Bristol-Myers Squibb Company, a Delaware corporation (the " Company "), in an amounts and in the forms determined pursuant to the provisions set forth on the reverse hereof and as more fully described in the CVR Agreement referred to on the reverse hereof. Such payments shall be made by the Company on the Milestone Payment Date, as defined in the CVR Agreement referred to on the reverse hereof, in accordance with the terms of the CVR Agreement.

Payment of any amounts pursuant to this CVR certificate shall be made only to the registered Holder (as defined in the CVR Agreement) of this CVR certificate. Such payment shall be made in the Borough of Manhattan, The City of New York, or at any other office or agency maintained by the Company for such purpose, in such coin or currency of the United States of America as at the time is legal tender for the payment of public and private debts; provided, however, the Company may pay such amounts by wire transfer or check payable in such money. [Trustee] has been initially appointed as Paying Agent at its office or agency in the Borough of Manhattan, The City of New York.

Reference is hereby made to the further provisions of this CVR certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been duly executed by the Trustee referred to on the reverse hereof by manual signature, this CVR certificate shall not be entitled to any benefit under the CVR Agreement, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated: [•]

By: _____

Name:
Title:

[Form of Reverse of CVR certificate]

1. This CVR certificate is issued under and in accordance with the Contingent Value Rights Agreement, dated as of [_____], [____] (the " CVR Agreement "), between the Company and [Trustee], a [_____], as trustee (the " Trustee ," which term includes any successor Trustee under the CVR Agreement), and is subject to the terms and provisions contained in the CVR Agreement, to all of which terms and provisions the Holder of this CVR certificate consents by acceptance hereof. The CVR Agreement is hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the CVR Agreement for a full statement of the respective rights, limitations of rights, duties, obligations and immunities thereunder of the Company, the Trustee and the Holders of the CVRs. All capitalized terms used in this CVR certificate without definition shall have the respective meanings ascribed to them in the CVR Agreement. Copies of the CVR Agreement can be obtained by contacting the Trustee.

2. On the Milestone Payment Date, the Company shall make the payments required by Section 3.1(c) of the CVR Agreement to the Trustee, for further distribution by the Trustee to the Holders in accordance with Section 3.1(c) of the CVR Agreement.

3. In the event of any conflict between this CVR certificate and the CVR Agreement, the CVR Agreement shall govern and prevail.

4. The Milestone Payment, if any, and interest thereon, if any, shall be payable by the Company in such coin or currency of the United States of America as at the time is legal tender for the payment of public and private debts; provided , howeve r, that such amounts may be paid check or wire transfer payable in such money. [Trustee] has been initially appointed as Paying Agent at its office or agency in the Borough of Manhattan, The City of New York.

5. If an Event of Default occurs and is continuing, either the Trustee may or the Majority Holders, by notice to the Company and to the Trustee shall bring suit in accordance with the terms and conditions of the CVR Agreement to protect the rights of the Holders, including to obtain payment of all amounts then due and payable, with interest at the Default Interest Rate from the date of the Event of Default through the date payment is made or duly provided for.

6. No reference herein to the CVR Agreement and no provision of this CVR certificate or of the CVR Agreement shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay any amounts determined pursuant to the terms hereof and of the CVR Agreement at the times, place and amount, and in the manner, herein prescribed.

7. Each Milestone Payment or any other right, claim or payment of any kind under this CVR certificate, if any, shall be subordinated in right of payment, as set forth in Article 10 of the CVR Agreement, to the prior payment in full in cash or cash equivalents of all Senior Obligations whether outstanding on the date of the CVR Agreement or thereafter incurred.

8. As provided in the CVR Agreement and subject to certain limitations therein set forth, the transfer of the CVRs represented by this CVR certificate is registrable on the Security Register, upon surrender of this CVR certificate for registration of transfer at the office or agency of the Company maintained for such purpose in the Borough of Manhattan, The City of New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new CVR certificates or Direct Registration Securities, for the same amount of CVRs, will be issued to the designated transferee or transferees. The Company hereby initially designates the office of [Trustee] at [Address], New York, New York [Zip Code] as the office for registration of transfer of this CVR certificate.

9. As provided in the CVR Agreement and subject to certain limitations therein set forth, this CVR certificate is exchangeable for one or more CVR certificates or Direct Registration Securities representing the same number of CVRs as represented by this CVR certificate as requested by the Holder surrendering the same.

10. No service charge will be made for any registration of transfer or exchange of CVRs, but the Company may require payment of a sum sufficient to cover all documentary, stamp or similar issue or transfer taxes or other governmental charges payable in connection with any registration of transfer or exchange.

11. Prior to the time of due presentment of this CVR certificate for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this CVR certificate is registered as the owner hereof for all purposes, and neither the Company, the Trustee nor any agent shall be affected by notice to the contrary.

12. Neither the Company nor the Trustee has any duty or obligation to the holder of this CVR certificate, except as expressly set forth herein or in the CVR Agreement.

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Global Securities referred to in the within-mentioned CVR Agreement.

[_____], as the Trustee

Dated: [•]

By: _____
Authorized Signatory

Annex B

Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT, made as of [_____], [_____] (this " Agreement "), between Bristol-Myers Squibb Company, a Delaware corporation (" Assignor "), and [_____], a [___] (" Assignee "). Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings given to them in the CVR Agreement referred to below.

WITNESSETH:

WHEREAS, Assignor and [Trustee], as trustee (the " Trustee ") are parties to a Contingent Value Rights Agreement dated as of [____], [_____] (the " CVR Agreement "); and

WHEREAS, Assignor and Assignee desire to execute and deliver this Agreement evidencing the assignment to Assignee of due and punctual payment of the Milestone Payment and the performance and observance of every covenant of the CVR Agreement of Assignor to be performed and observed and the assumption thereof by Assignee.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignment . Effective as of [_____] (the " Assignment Date "), Assignor hereby assigns to Assignee, and Assignee hereby accepts the assignment of, the due and punctual payment of the Milestone Payment and the performance and observance of all covenants and conditions of the CVR Agreement on the part of Assignor to be performed or observed.

2. Assumption . Effective as of the Assignment Date, Assignee hereby assumes the due and punctual payment of the Milestone Payment and the performance and observance of all covenants and conditions of the CVR Agreement on the part of Assignor to be performed or observed.

3. Successors and Assigns . This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto and their respective successors and assigns.

4. Governing Law . This Agreement shall be governed by, construed and enforced in accordance with the laws of New York, without giving effect to the principles of conflicts of laws thereof.

5. Counterparts . This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

BRISTOL-MYERS SQUIBB COMPANY

By: _____
Name:
Title:

[ASSIGNEE]

By: _____
Name:
Title:

Exhibit 10.2

CELGENE CORPORATION

Executive Severance Plan
(Effective December 17, 2018)

1. Purpose . The purpose of this Celgene Corporation Executive Severance Plan (this " Plan ") is to provide certain Severance Payments and Benefits (as defined below) to designated key executives and employees of the Company in the event of a termination of their employment in certain specified circumstances. This Plan has been adopted in the form set forth herein effective as of December 17, 2018 (the " Effective Date "). This Plan is intended to be a top hat welfare benefit plan under ERISA.

2. Definitions . The following definitions are applicable for purposes of this Plan, in addition to terms defined in Section 1 above:

a) " Accrued Obligations " means, for an Eligible Employee, the Eligible Employee's (i) base salary otherwise payable through the Date of Termination, (ii) any annual cash bonus earned by the Eligible Employee for a prior fiscal year but not paid to the Eligible Employee as of the Date of Termination, (iii) unreimbursed business expenses reimbursable under Company policies then in effect, and (iv) earned and accrued vacation pay, if applicable, to the extent not theretofore paid.

b) " Affiliate " means with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person.

c) " Base Severance Amount " means, for an Eligible Employee, the sum of (i) the greater of (1) the Eligible Employee's annual base salary as of the Date of Termination (disregarding any reduction thereto that serves as the basis for the Eligible Employee's resignation for Good Reason) and (2) to the extent applicable, the Eligible Employee's annual base salary at the time of the first occurrence of a Change in Control within the two (2) years preceding the Date of Termination, plus (ii) the greater of (1) the Eligible Employee's target annual cash incentive opportunity for the fiscal year of the Company during which the Date of Termination occurs (disregarding any reduction thereto that serves as the basis for the Eligible Employee's resignation for Good Reason) and (2) to the extent applicable, the Eligible Employee's target annual cash incentive opportunity for the fiscal year of the Company during which a Change in Control first occurs within the two (2) years preceding the Date of Termination (such greater amount, the " Target Bonus ").

d) " Benefit Continuation Period " means, for an Eligible Employee, the period commencing on the Eligible Employee's Date of Termination and ending on the expiration of the Eligible Employee's Severance Continuation Period.

e) " Benefit Plans " means all medical, dental and vision benefit plans of the Company, as may be in effect from time to time.

f) " Board " means the Board of Directors of Celgene Corporation.

g) " Cause " means (i) at any time at which clause (ii) of this Section 2(g) does not apply, an Eligible Employee's dishonesty, fraud, insubordination, willful misconduct, refusal to perform services (for any reason other than illness or incapacity), material violation of Company policy, material breach of an employment or similar agreement, misappropriation of Company property, or materially unsatisfactory performance of his or her duties for the Company that has not been cured within ten (10) days after a written demand for substantial performance is delivered to the Eligible Employee by the Committee (or its designee), which demand specifically identifies the manner in which the Committee believes that the Eligible Employee has not substantially performed the Eligible Employee's duties, in each case as determined by the Committee or (ii) on or within two years following the date of a Change in Control, an Eligible Employee's dishonesty, fraud, insubordination, willful misconduct, refusal to perform services (for any reason other than illness or incapacity), material violation of Company policy, material breach of an employment or similar agreement, or misappropriation of Company property; *provided* , that (1) in the event of a dispute concerning the application of this Section 2(g)(ii), no claim by the Company that Cause exists shall be given effect unless the Board determines that it has been established by clear and convincing evidence that Cause exists and a resolution to that effect is adopted by the affirmative vote of not less than seventy five percent (75%) of the entire membership of the Board (after reasonable notice to the Eligible Employee and an opportunity for the Eligible Employee, together with the Eligible Employee's counsel, to be heard by the Board) and (2) for purposes of this proviso, references to the "Board" shall, at any time at which the Company is not the ultimate parent entity of the controlled group that includes the Company, mean the board of directors of the ultimate parent entity of such controlled group.

h) " CEO " means the Company's Chief Executive Officer.

i) " Change in Control " shall have the meaning ascribed to such term in the Celgene Corporation 2017 Stock Incentive Plan (Amended and Restated as of April 19, 2017), as may be amended from time to time, and any successor to that plan. Notwithstanding the foregoing, a Company transaction that does not constitute a change in control event under Code Section 409A shall not be considered a Change in Control for purposes of this Plan.

j) " CIC Termination " means an Eligible Employee's (i) Qualifying Termination that occurs on, or within two years following, the date of a Change in Control or (ii) Qualifying Termination that is a termination of employment without Cause which the Eligible Employee reasonably demonstrates was (A) at the request of a third party that has taken steps reasonably calculated to effect a Change in Control or (B) otherwise arose in connection with, or in anticipation of, a Change in Control (regardless of whether a Change in Control actually occurs).

k) " COBRA " means the continuation coverage requirements for "group health plans" under Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and as codified in Code Section 4980B and ERISA Sections 601 through 608, each as amended from time to time, including rules thereunder and successor provisions and rules thereto.

l) " Code " means the Internal Revenue Code of 1986, as amended from time to time, and all regulations, interpretations, and administrative guidance issued thereunder.

m) " Code Section 409A " means Section 409A of the Code.

n) " Committee " means the Management Compensation and Development Committee of the Board.

o) " Company " means Celgene Corporation, a Delaware corporation, including all of its Affiliates, collectively (and any successors or assigns thereto), and any successor that assumes the obligations of the Company under this Plan, by way of merger, acquisition, consolidation or other transaction.

p) " Date of Termination " means, for an Eligible Employee, the Eligible Employee's "separation from service" as defined in Treasury Regulation § 1.409A-1(h).

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

r) " Eligible Employee " means an employee of the Company who (i) has been designated by the Committee (or its delegate) as a participant in this Plan, and (ii) has timely and properly executed and delivered a Participation Agreement to the Company.

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

t) " Excise Tax " has the meaning specified in Section 7.

u) " Good Reason " means, for an Eligible Employee, the occurrence of any of the following events, unless the Eligible Employee has consented thereto:

(i) a material reduction in the Eligible Employee's (1) annual base salary or (2) target annual cash incentive compensation opportunity and target annual equity incentive compensation opportunity, in the aggregate;
(ii) a material diminution in the Eligible Employee's duties and responsibilities (other than temporarily while the Eligible Employee is physically or mentally incapacitated or as required by applicable law);
(iii) a material adverse change in the Eligible Employee's reporting relationships; or
(iv) a relocation of an Eligible Employee's primary work location that results in an increase to the Eligible Employee's one-way commute by 30 miles or more;

provided , that an Eligible Employee shall not be deemed to terminate employment for Good Reason unless (I) within ninety (90) days after the initial occurrence of the event triggering Good Reason, the Eligible Employee delivers written notice to the Company of his or her intention to terminate his or her employment for Good Reason which specifies in reasonable detail the circumstances claimed to give rise to the Eligible Employee's right to terminate employment for Good Reason, (II) the Company fails to cure or correct such conduct or condition within thirty (30) days following receipt of such notice, and (III) the Eligible Employee's Date of Termination occurs within ninety (90) days after the end of the cure period described in clause (II).

v) " JAMS " has the meaning specified in Section 12(f).

w) " Participation Agreement " means an individual agreement (a form of which is shown in Appendix A) provided by the Company to an Eligible Employee, which documents the employee's eligibility to participate in the Plan and has been signed and accepted by the employee.

x) " Person " means an individual, corporation, partnership, limited liability company, association, trust, other entity, group or organization include a governmental authority.

y) " Qualifying Termination " means termination of an Eligible Employee's employment with the Company that is either (i) initiated by the Company without Cause or (ii) initiated by the Eligible Employee for Good Reason. Termination due to death or disability shall not be treated as a Qualifying Termination. In addition, if, prior to a Change in Control, the Company determines after an Eligible Employee's Date of Termination that the Eligible Employee's employment could have been terminated for Cause, the Eligible Employee's termination shall not be treated as a Qualifying Termination and the Eligible Employee shall reimburse the Company for all Severance Payments and Benefits previously paid under the Plan.

z) " Reduced Amount " has the meaning specified in Section 7(a).

aa) " Release " has the meaning specified in Section 6.

bb) " Release Period " has the meaning specified in Section 6.

cc) " Severance Factor " means, for each Eligible Employee, the factor specified in the Eligible Employee's Participation Agreement.

dd) " Severance Continuation Period " means, for an Eligible Employee, the Eligible Employee's Severance Factor multiplied by 12 months.

ee) " Severance Payments and Benefits " means all benefits provided or payments made by the Company to or for the benefit of an Eligible Employee under this Plan.

3. Eligibility . An Eligible Employee shall be eligible for Severance Payments and Benefits under this Plan, subject to the terms and conditions described herein, only if he or she experiences a Qualifying Termination and is an Eligible Employee on his or her Date of Termination.

4. Administration .

a) This Plan shall be interpreted, administered and operated by the Committee, which shall have complete authority, subject to the express provisions of this Plan, to interpret this Plan, to prescribe, amend and rescind rules and regulations relating to this Plan, and to make all other determinations necessary or advisable for the administration of this Plan. Such authority shall include the powers to resolve ambiguities, inconsistencies, and omissions, and to correct any scrivener's error. The Committee may delegate any of its duties hereunder to a subcommittee, or to such person or persons from time to time as it may designate. All decisions, interpretations and other actions of the Committee shall be final, conclusive and binding on all parties who have an interest in this Plan.

b) Notwithstanding anything in this Plan to the contrary, upon or after a Change in Control, neither the Committee nor any other person shall have discretionary authority in the administration of the Plan, and any court or tribunal that adjudicates any dispute, controversy, or claim in connection with benefits under this Plan will apply a de novo standard of review to any determinations made by the Committee or the Company. Such de novo standard shall apply notwithstanding the grant of full discretion hereunder to the Committee or any person or characterization of any decision by the Committee or by such person as final, binding or conclusive on any party.

5. Termination of Employment for any Reason . Subject to the terms and conditions hereof, in the event of termination of an Eligible Employee's employment with the Company for any reason:

a) The Company shall pay the Eligible Employee the Accrued Obligations, payable on the dates such amounts would have been payable under the Company's policies if the Eligible Employee's employment had not terminated.

b) All outstanding equity-based awards held by the Eligible Employee as of the Date of Termination shall be governed by the terms and conditions of the applicable equity plan(s) (including without limitation the Celgene Corporation 2017 Stock Incentive Plan (Amended and Restated as of April 19, 2017) and/or the Celgene Corporation 2014 Equity Incentive Plan) and the applicable equity award agreement(s).

c) The Eligible Employee's benefits and rights under the Company's benefit plans shall be determined in accordance with the applicable provisions of such plans, in each case as in effect and amended from time to time.

6. Qualifying Termination . In addition to the payments and benefits set forth in Section 5, if an Eligible Employee's termination of employment with the Company is a Qualifying Termination, the Eligible Employee shall also be entitled to receive the following payments and benefits, subject to the Eligible Employee timely executing a release and termination agreement in a form to be provided by the Company no later than five (5) days after termination (and which shall include a one-year post-termination non-competition covenant, which may be waived, in whole or in part, by the Committee in its sole discretion) (the " Release "), and such Release becoming effective, enforceable and irrevocable no later than 50 days following the Eligible Employee's Date of Termination (such period, the " Release Period "):

a) A cash amount equal to the product of the Eligible Employee's Severance Factor multiplied by the Eligible Employee's Base Severance Amount, payable in a lump sum on the Company's first regularly scheduled payroll date following the expiration of the Release Period; provided , that to the extent the Eligible Employee's right to receive the cash amount under this Section 6(a) replaces the Eligible Employee's right to receive other cash severance that constitutes non-exempt deferred compensation for purposes of Code Section 409A under another plan, arrangement or agreement of the Company, the cash amount payable under this Section 6(a) shall be paid on the payment date(s) applicable to such other cash severance to the extent necessary to avoid the imposition of an additional tax under Code Section 409A.

b) If the Eligible Employee timely elects to continue coverage under the Company's Benefit Plans pursuant to COBRA, the Company shall either provide the elected level of coverage at active employee rates through the end of the Benefit Continuation Period or pay to the Eligible Employee a monthly cash payment in lieu of subsidized coverage. Such monthly payment shall equal the excess of (i) the total COBRA premium for the elected level of Benefit Plan coverage for the month, over (ii) the active employee rate for such coverage for such month. Such payment shall be made each month that starts after the Date of Termination (or, if later, the first month for which the Company does not make available subsidized coverage), without any requirement to furnish documentation of expenses incurred; provided that payments under this Section 6(b) shall cease to be required upon the earliest of (I) the last day of the Benefit Continuation Period, (II) the Eligible Employee's death, or (III) discontinuation of the Eligible Employee's coverage under any Company Benefit Plan due to failure to make required contributions.

c) During the eighteen (18)-month period commencing on the Eligible Employee's Date of Termination, the Eligible Employee shall be eligible for reasonable outplacement services furnished by the Company commensurate with the Eligible Employee's level and position. The outplacement benefits shall be provided in kind; cash shall not be paid in lieu of outplacement benefits nor will Severance Payments and Benefits be increased if the Eligible Employee declines or does not use the outplacement benefits.

d) If the Qualifying Termination is a CIC Termination:

i. a cash amount equal to the product of (A) the greater of (x) the Target Bonus and (y) the annual bonus for the fiscal year of the Company in which the Date of Termination occurs to which the Eligible Employee would be entitled based on the actual level of achievement of the applicable performance goals through the Date of Termination, and (B) a fraction, the numerator of which is the number of days between the first day of the fiscal year of the Company in which the Date of Termination occurs and the denominator of which is the total number of days in such fiscal year, payable in a lump sum on the Company's first regularly scheduled payroll date following the expiration of the Release Period; and

ii. the Eligible Employee's outstanding equity awards granted under the Company's equity plans (A) that are subject to time-based vesting conditions will vest in full and, if applicable, become exercisable in full, or (B) that are subject to performance-based vesting conditions shall vest based on the level of performance specified in the applicable award agreement for an involuntary termination within two years following a Change in Control.

7. Effect of Federal Excise Tax .

a) *Cut-Back to Maximize Retained After-Tax Amounts* . In the event the Company determines that any benefit provided or payment made by the Company to or for the benefit of an Eligible Employee, whether paid or payable or distributed or distributable pursuant to the terms of an agreement, plan, program, arrangement of the Company or otherwise (a " Payment ") would constitute a "parachute payment" (as defined in section 280G(b)(2) of the Code, each a " Parachute Payment ") and subject the Eligible Employee to an excise tax imposed by Code Section 4999 (or any comparable provision of state law) or any interest or penalties related to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the " Excise Tax "), then the Company shall reduce the Payments to an amount that is one dollar less than the smallest amount that would give rise to the Excise Tax (the " Reduced Amount "), but only if, after taking into account all income and employment taxes, such Reduced Amount would be greater than the net after-tax value (after taking into account the Excise Tax and all income and employment taxes) of the unreduced Payments. Any determination required under this Section 7 shall be made by an independent accounting firm of nationally recognized standing selected by the Company prior to the Change in Control (the " Accounting Firm ") that gives rise to the application of the Excise Tax. All determinations made by the Accounting Firm under this Section 7 shall be binding upon the Company and the Eligible Employee.

b) *Implementation Rules* . If the Payments must be reduced as provided in Section 7(a), any reduction in Payments required by this provision will occur in the following order: (i) cash payments that may not be valued under Treas. Reg. § 1.280G-1, Q&A-24(c) (" 24(c) "), (ii) equity-based payments that may not be valued under 24(c), (iii) cash payments that may be valued under 24(c), (iv) equity-based payments that may be valued under 24(c) and (v) other types of benefits. With respect to each category of the foregoing, such reduction shall occur first with respect to amounts that are not "deferred compensation" within the meaning of Code Section 409A and next with respect to payments that are deferred compensation, in each case, beginning with payments or benefits that are to be paid the farthest in time from the Accounting Firm's determination. If two or more long-term incentive awards are granted on the same date, each award will be reduced on a pro-rata basis. The Eligible Employee shall be advised of the determination as to which Payments will be reduced and the reasons therefor, and the Eligible Employee and his or her advisors will be entitled to present information that may be relevant to this determination. In no event shall such reduction be effected in a manner that triggers an additional tax under Code Section 409A.

c) To the extent requested by the Eligible Employee, the Company shall cooperate with the Eligible Employee in good faith in valuing, and the Accounting Firm shall take into account the value of, services provided or to be provided by the Eligible Employee (including the Eligible Employee's agreeing to refrain from performing services pursuant to a covenant not to compete or similar covenant, before, on or after the date of a change in ownership or control of the Company (within the meaning of Q&A-2(b) of the final regulations under Section 280G of the Code), such that payments in respect of such services may be considered reasonable compensation within the meaning of Q&A-9 and Q&A-40 to Q&A-44 of the final regulations under Section 280G of the Code and/or exempt from the definition of the term "parachute payment" within the meaning of Q&A-2(a) of the final regulations under Section 280G of the Code in accordance with Q&A-5(a) of the final regulations under Section 280G of the Code.

8. Other Provisions Applicable to Severance Payments and Benefits.

a) *Deferrals Included in Salary and Bonus*. All references in this Plan to salary and annual incentive amounts mean those amounts before reduction pursuant to any plan or other arrangement for deferral of compensation.

b) *Transfers of Employment*. Anything in this Plan to the contrary notwithstanding, a transfer of employment from the Company to an Affiliate or vice versa shall not be considered a termination of employment for purposes of this Plan.

c) *Continuation of Benefits During Release Period*. Any Severance Payment or Benefit that would otherwise have been made to an Eligible Employee but that is conditioned upon the execution and effectiveness of the Release shall be paid or provided on the first regular payroll date following the expiration of the Release Period, subject to the execution and effectiveness of the Release; provided that any in-kind benefits provided pursuant to this Plan shall continue in effect after the Date of Termination pending the execution and effectiveness of the Release, subject to the Eligible Employee being required to reimburse the Company for the full cost of providing such in-kind benefits in the event the Release does not become effective and irrevocable by the end of the Release Period; provided further that any equity awards that become vested pursuant to Section 6(d)(ii) and that constitute deferred compensation within the meaning of, and subject to, Code Section 409A, shall be settled at the time or times specified in the applicable award agreement to the extent required in order to avoid the imposition of an additional tax under Code Section 409A, subject to the Eligible Employee being required to repay the Company for the full value of any such equity awards paid to the Eligible Employee if the Release does not become effective and irrevocable by the end of the Release Period.

9. Other Plans and Policies; Non-Duplication of Payments or Benefits.

a) *Superseded Agreements and Rights*. This Plan constitutes the entire understanding between the Company and the Eligible Employee relating to Severance Payments and Benefits to be paid or provided to the Eligible Employee by the Company, and supersedes and cancels all prior agreements and understandings with respect to the subject matter of this Plan.

b) *Non-Duplication of Payments and Benefits*. An Eligible Employee shall not be entitled to any Severance Payment or Benefit under this Plan which duplicates a payment or benefit received or receivable by the Eligible Employee under any employment or severance agreement, or any other plan, program or arrangement of the Company or any severance required by applicable law or regulation. If an Eligible Employee has a right to payments or benefits that duplicate the Severance Payment or Benefit under this Plan, the benefit under this Plan shall be reduced, dollar for dollar, by the amount of the duplicate payment(s) and benefit(s).

10. Special Rules for Compliance with Code Section 409A. This Section 10 serves to ensure compliance with applicable requirements of Code Section 409A. If the terms of this Section 10 conflict with other terms of this Plan, the terms of this Section 10 shall control.

a) All payments that may be made and benefits that may be provided pursuant to this Plan are intended to comply with or be exempt from the requirements of Code Section 409A and this Plan shall be interpreted accordingly.

b) Separate Payments . Each installment in a series of Severance Payments and Benefits shall be deemed a separate payment for purposes of Code Section 409A.

c) Six-Month Delay Rule . If an Eligible Employee is a "specified employee" (as determined by the Committee or its designee in accordance with Treasury Regulation § 1.409A-1(i)) as of his or her Date of Termination, then all Severance Payments that are subject to the requirements of Code Section 409A (determined after taking into account the "short-term deferral" rule in Treasury Regulation § 1.409A-1(b)(4), the "two-year, two-time" rule described in Treasury Regulation § 1.409A-1(b)(9), and any other available exception from such requirements) shall be subject to the six-month delay rule of Code Section 409A(a)(2)(B)(i). Each payment that is subject to such six-month delay rule shall be made, without interest, on the later of (i) the Company's first payroll date that is at least six months after the Eligible Employee's Date of Termination (or, if earlier, as soon as practicable after the Eligible Employee's death) or (ii) the date when such payment would otherwise be due under the terms of the Plan.

d) Continued Benefits . To the extent required by Code Section 409A, any reimbursement or in-kind benefit provided under this Plan shall be provided in accordance with the following: (i) the amount of expenses eligible for reimbursement, or in-kind benefits provided during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year; (ii) any payments in lieu of the benefits shall be paid no later than the end of Eligible Employee's taxable year next following Eligible Employee's taxable year in which the benefit or expense was due to be paid; and (iii) any right to reimbursements or in-kind benefits under this Plan shall not be subject to liquidation or exchange for another benefit.

e) General Compliance . In addition to the foregoing provisions, the terms of this Plan, including any authority of the Company and rights of the Eligible Employee which constitute a deferral of compensation subject to Code Section 409A, shall be limited to those terms permitted under Code Section 409A without resulting in a tax penalty to Eligible Employee, and any terms not so permitted under Code Section 409A shall be modified and limited to the extent necessary to avoid tax under Code Section 409A but only to the extent that such modification or limitation is permitted under Code Section 409A. The Company and its employees and agents make no representation and are providing no advice regarding the taxation of the payments and benefits under this Plan, including with respect to taxes, interest and penalties under Code Section 409A and similar liabilities under state and local tax laws. No indemnification or gross-up is payable under this Plan with respect to any such tax, interest, or penalty under Code Section 409A or similar liability under state or local tax laws applicable to any Eligible Employee.

11. Claims Procedures .

a) Initial Claims . An Eligible Employee who believes he or she is entitled to a payment under this Plan that has not been received may submit a written claim for benefits under this Plan within 60 days after the Eligible Employee's Date of Termination. Claims shall be addressed and sent to:

Management Compensation and Development Committee
c/o General Counsel
Celgene Corporation
86 Morris Avenue
Summit, NJ 07901

If the Eligible Employee's claim is denied, in whole or in part, the Eligible Employee will be furnished with written notice of the denial within 90 days after the Committee's receipt of the Eligible Employee's written claim, unless special circumstances require an extension of time for processing the claim, in which case the decision period may be extended by up to an additional 90 days. If such an extension of time is necessary, written notice of the extension will be furnished to the Eligible Employee before the termination of the initial 90-day period and will describe the circumstances requiring the extension and the date by which a decision is expected to be rendered. Written notice of the denial of the Eligible Employee's claim will contain the following information:

(i) the reason or reasons for the denial of the Eligible Employee's claim;
(ii) references to the Plan provisions on which the denial of the Eligible Employee's claim was based;
(iii) a description of any additional information or material required by the Committee to reconsider the Eligible Employee's claim (to the extent applicable) and an explanation of why such material or information is necessary; and
(iv) a description of this Plan's review procedures and time limits applicable to such procedures, including a statement of the Eligible Employee's right to bring a civil action under Section 502(a) of ERISA following a benefit claim denial on review.

b) Appeal of Denied Claims . If the Eligible Employee's claim is denied, the Eligible Employee (or his or her authorized representative) may file a request for review of the claim in writing with the Committee. This request for review must be filed no later than 60 days after the Eligible Employee has received written notification of the denial.

(i) Such request for review may include any comments, documents, records and other information relating to his or her claim for benefits.
(ii) The Eligible Employee has the right to be provided with, upon request and free of charge, reasonable access to and copies of all pertinent documents, records and other information that is relevant to his or her claim for benefits.
(iii) The review of the denied claim will take into account all comments, documents, records and other information that the Eligible Employee submitted relating to his or her claim, without regard to whether such information was submitted or considered in the initial denial of his or her claim.

c) Committee's Response to Appeal . The Committee will notify the Eligible Employee of its decision within 60 days after the Committee's receipt of the Eligible Employee's written claim for review; provided that the Committee may extend the review period by up to 60 additional days, if the Committee notifies the Eligible Employee in writing of the need for an extension (and the reason therefor) before the end of the initial 60-day period. If the Committee makes an adverse decision on appeal, the Committee shall communicate its decision in a writing that includes:

(i) the reason or reasons for the denial of the Eligible Employee's appeal;
(ii) reference to the Plan provisions on which the denial of the Eligible Employee's appeal is based;
(iii) a statement that the Eligible Employee is entitled to receive, upon request and free of charge, reasonable access to, and copies of, this Plan and all documents, records and other information relevant to his or her claim for benefits; and
(iv) a statement describing the Eligible Employee's right to bring an action under Section 502(a) of ERISA.

d) Exhaustion of Administrative Remedies . The exhaustion of these claims procedures is mandatory for resolving every claim and dispute arising under this Plan. As to such claims and disputes:

(i) no claimant shall be permitted to commence any arbitration or legal action to recover benefits or to enforce or clarify rights under this Plan or under any provision of law until these claims procedures have been exhausted in their entirety;

(ii) failure to submit a claim, appeal, or any required information by the applicable deadline under these claims procedures shall result in forfeiture of the benefits being claimed;

(iii) in any arbitration or legal action, all explicit and implicit determinations by the Committee (including, but not limited to, determinations as to whether the claim, or a request for a review of a denied claim, was timely filed) shall be afforded the maximum deference permitted by law; and

(v) no legal action or arbitration may be commenced by the Eligible Employee later than 180 days subsequent to the date of the written response of the Committee to an Eligible Employee's request for review pursuant to Section 11(c).

12. Miscellaneous .

a) Assignment; Non-transferability . No right of an Eligible Employee to any payment or benefit under this Plan shall be subject to assignment, anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by creditors of the Eligible Employee or of any beneficiary of the Eligible Employee. The terms and conditions of this Plan shall be binding on the successors and assigns of the Company.

b) Withholding . The Company shall have the right to deduct from all payments hereunder all taxes that the Company determines are required by law to be withheld therefrom. Regardless of the amount withheld, the recipient of payments, benefits, or other income (including imputed income) under the Plan shall be solely responsible for all taxes owed with respect to such payments, benefits, and other income.

c) No Right To Employment . Nothing in this Plan shall be construed as giving any person the right to be retained in the employment of the Company, nor shall it affect the right of the Company to dismiss an Eligible Employee without any liability except as required by this Plan.

d) Amendment and Termination . The Company, by action of the Committee, reserves the right to amend or terminate this Plan at any time, without advance notice to any Eligible Employee and without regard to the effect of the amendment or termination on any Eligible Employee or on any other individual. Any amendment or termination of this Plan will be in writing. Notwithstanding the foregoing, (i) any termination of the Plan, or amendment that materially adversely affects the rights of any Eligible Employee under the Plan, in each case, that is approved by the Committee prior to a Change in Control, shall not be effective with respect to any applicable Eligible Employee until the first anniversary of the date that such Eligible Employee receives written notice from the Company of such termination or amendment and (ii) the Company may not, without an Eligible Employee's written consent, terminate this Plan, or amend this Plan in any way that adversely affects the rights of any Eligible Employee, in each case, either (1) in anticipation of a specific contemplated Change in Control or (2) at any time following a Change in Control. Any action of the Company in amending or terminating this Plan will be taken in a non-fiduciary capacity. In no event shall any amendment or termination of this Plan affect the Severance Payments or Benefits payable under this Plan to any Eligible Employee whose employment termination date has occurred prior to the effective date of the amendment or termination of this Plan.

e) Governing Law . THE VALIDITY, CONSTRUCTION, AND EFFECT OF THIS PLAN AND ANY RULES AND REGULATIONS RELATING TO THIS PLAN SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS (INCLUDING THOSE GOVERNING CONTRACTS) OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS, AND APPLICABLE FEDERAL LAW. If any provision hereof shall be held by a court or arbitrator of competent jurisdiction to be invalid and unenforceable, the remaining provisions shall continue to be fully effective.

f) Arbitration . To the fullest extent permitted by law, any and all disputes, claims, and causes of action, in law or equity, arising from or relating to this Plan (including the Release, except as specifically provided in the Release) or its enforcement, performance, breach or interpretation, shall be resolved by final, binding, and confidential arbitration held in the state and county where the Eligible Employee principally worked immediately prior to the Eligible Employee's termination and conducted through Judicial Arbitration & Mediation Services (" JAMS ") in accordance with the then-current JAMS Employment Arbitration Rules & Procedures (and no other JAMS rules). Judgment may be entered on the arbitrator's award in any court having jurisdiction. Nothing in this Section 12(f) is intended to prevent either the Eligible Employee or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. For purposes of settling any dispute or controversy arising hereunder or for the purpose of entering any judgment upon an award rendered by the arbitrator, the Company and the Eligible Employee hereby consent to the jurisdiction of any or all of the following courts: (i) the United States District Court for the District of New Jersey or (ii) any of the courts of the State of New Jersey. The Company and the Eligible Employee hereby waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to such courts' jurisdiction and any defense of inconvenient forum with respect to such courts. The Company and the Eligible Employee hereby agree that a judgment upon an award rendered by the arbitrator may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. This Section 12(f) shall not apply to any claims of violation of any federal or state employment discrimination laws.

g) No Duty to Mitigate . No employee shall be required to mitigate, by seeking employment or otherwise, the amount of any payment that the Company becomes obligated to make under this Plan, and, except as expressly provided in this Plan, amounts or other benefits to be paid or provided to an Eligible Employee pursuant to this Plan shall not be reduced by reason of the Eligible Employee's obtaining other employment or receiving similar payments or benefits from another employer.

h) Employment at Will . Nothing contained in this Plan shall give any employee the right to be retained in the employment of the Company or shall otherwise modify the employee's at will employment relationship with the Company. This Plan is not a contract of employment between the Company and any employee.

i) Legal Fees . The Company agrees to pay as incurred (within 30 days following the Company's receipt of an invoice from the Eligible Employee), at any time from the date of a Change in Control through the Eligible Employee's remaining lifetime, to the fullest extent permitted by applicable law, all legal fees and expenses that the Eligible Employee may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, the Eligible Employee or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof whether such contest is between the Company and the Eligible Employee or between either of them and any third party (including as a result of any contest by the Eligible Employee about the amount of any payment pursuant to this Plan and any IRS audit).

j) Complete Statement of Plan . This Plan document (which incorporates each Eligible Employee's Participation Agreement by reference) contains a complete statement of the Plan's terms and supersedes all prior statements with respect to the Plan's terms. No other evidence, whether written or oral, shall be taken into account in interpreting the provisions of the Plan. In the event of a conflict between a provision in this Plan document and any booklet, brochure, presentation, or other communication (whether written or oral), the provision of this Plan document shall control.

Appendix A
Celgene Corporation Executive Severance Plan
Form of Participation Agreement

Celgene Corporation (the " Company ") is pleased to inform you, _____, that you are eligible to participate in the Company's Executive Severance Plan (the " Plan "). A copy of the Plan is included with this Participation Agreement or has previously been delivered or made available to you. Your participation in the Plan is subject to all of the terms and conditions of the Plan and this Participation Agreement. Capitalized terms used and not defined herein have the meanings ascribed to such terms in the Plan.

In order to actually become a participant in the Plan (an "Eligible Employee" as described in the Plan), you must complete and sign this Participation Agreement and return it to Andrea Tuck, VP, Global Compensation & Benefits as soon as possible.

The Plan describes in detail the circumstances under which you may become eligible for Severance Payments and Benefits. As described more fully in the Plan, you may become eligible for certain Severance Payments and Benefits under Section 6 of the Plan only if you voluntarily terminate your employment with the Company for Good Reason or the Company terminates your employment for a reason other than Cause and other than as a result of your disability or death (each, a " Qualifying Termination "). As more fully described in the Plan, your severance benefit is based on your annual base salary and bonus opportunity multiplied by a "Severance Factor."

Your Severance Factor is equal to ____x. However, if your Date of Termination occurs (1) on, or within two years following, the date of a Change in Control or (2) due to your termination of employment without Cause and you reasonably demonstrate that such termination of employment (a) was at the request of a third party that has taken steps reasonably calculated to effect a Change in Control or (b) otherwise arose in connection with, or in anticipation of, a Change in Control (regardless of whether a Change in Control actually occurs) (each of (1) and (2), a " CIC Termination "), your Severance Factor will instead be ____x.

In addition, the Plan entitles you to benefits continuation coverage at active employee rates for ____ months after your Date of Termination (or _____ months, if your Qualifying Termination constitutes a CIC Termination), subject to the terms and conditions of the Plan.

In order to receive Severance Payments and Benefits under the Plan, you will be required to execute and not revoke a Release (which will include a one-year post-termination non-competition covenant, which may be waived, in whole or in part, by the Committee in its sole discretion) when you terminate employment. Also, as explained in the Plan, your Severance Payments and Benefits (if any) will be reduced if necessary to avoid "golden parachute" excise taxes under the Internal Revenue Code, but this reduction will occur only if the reduction is economically beneficial to you.

By your signature below, you and the Company agree that your participation in the Plan is governed by this Participation Agreement and the provisions of the Plan. Your signature below confirms that: (1) you have received a copy of the Plan; (2) you have carefully read this Participation Agreement and the Plan; (3) decisions and determinations by the Committee under the Plan will be final and binding on you and your successors; and (4) the Plan and this Participation Agreement constitute the entire understanding between you and the Company relating to non-equity severance compensation to be paid or provided to you by the Company, and supersede and cancel all prior agreements and understandings with respect to non-equity severance compensation (including without limitation any offer letter between you and the Company).

In the event of any conflict between this Participation Agreement and the terms of the Plan as in effect from time to time, the terms of the Plan shall control.

CELGENE CORPORATION	**[ELIGIBLE EMPLOYEE NAME]**
Signature	Signature
Name	Date
Title	

[Enclosure: Celgene Corporation Executive Severance Plan]