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): **August 24, 2020**

CRYOPORT, INC.

(Exact name of registrant as specified in its charter)

Nevada	**001-34632**	**88-0313393**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

112 Westwood Place, Suite 350, Brentwood, **TN 37027**
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(949) 470-2300**

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

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

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Trading Symbol**	**Name of each exchange on which registered**
Common Stock, $0.001 par value	CYRX	The NASDAQ Stock Market LLC
Warrants to purchase Common Stock	CYRXW	The NASDAQ Stock Market LLC

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

MVE Cryobiological Purchase Agreement

On August 24, 2020, Cryoport, Inc., a Nevada corporation (the "**Company**"), entered into a Purchase Agreement (the "**Purchase Agreement**") with Chart Industries, Inc. ("**Chart**") pursuant to which the Company has agreed to acquire Chart's MVE cryobiological storage business (the "**MVE Acquisition**") for a cash purchase price at closing of $320 million, subject to customary closing working capital and other adjustments (the "**Purchase Price**"). The MVE Acquisition is structured as the acquisition of certain equity interests and assets and the transfer of certain liabilities in connection therewith.

The Purchase Agreement contains customary representations, warranties, and covenants of Chart and its affiliates and the Company. From the date of the Purchase Agreement until the closing of the transactions contemplated thereby (the "**Closing**"), Chart is required to operate the MVE cryobiological business in the ordinary course and to comply with certain covenants regarding the operation of such business.

The Closing is subject to customary closing conditions, including, among others, (i) the absence of any governmental order enjoining, preventing, restraining or otherwise prohibiting the consummation of the transactions contemplated by the Purchase Agreement, (ii) the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, applicable to the MVE Acquisition, (iii) the accuracy of the parties' representations and warranties contained in the Purchase Agreement, (iv) the parties' compliance with the covenants and obligations contained in the Purchase Agreement in all material respects, and (v) the absence of a material adverse effect with respect to the MVE cryobiological storage business. The Purchase Agreement contains certain customary termination rights and, subject to certain limitations set forth therein, may be terminated by either the Company or Chart if the MVE Acquisition has not been completed by December 31, 2020 (subject to automatic extension in certain circumstances); provided, however, that such right to terminate the Purchase Agreement is not available to any party whose breach of any provision of the Purchase Agreement results in the failure of the MVE Acquisition to be completed by such date.

The Company expects to finance the Purchase Price with net proceeds from the Private Placement (as defined below) and use of the Company's cash balance for the remainder of the Purchase Price. The Company currently expects the MVE Acquisition to close in 2020, subject to satisfaction of specified closing conditions.

The foregoing summary of the Purchase Agreement and the transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Purchase Agreement, which is filed as Exhibit 2.1 hereto and incorporated herein by reference. The Purchase Agreement has been filed to provide investors and securityholders with information regarding its terms and conditions. It is not intended to provide any other information about the Company or the MVE Acquisition. The Purchase Agreement contains representations, warranties, and covenants of the parties thereto made to and solely for the benefit of each other, and such representations, warranties, and covenants may be subject to materiality and other qualifiers applicable to the contracting parties that differ from those that may be viewed as material to investors. Accordingly, investors and securityholders should not rely on the representations, warranties, and covenants as characterizations of the actual state of facts. Moreover, information concerning the subject matter of the representations, warranties, and covenants may change after the date of the Purchase Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

Blackstone Investment

On August 24, 2020, the Company entered into a Securities Purchase Agreement (the "**Financing Agreement**") with BTO Freeze Parent L.P. (the "**Purchaser**"), an investment vehicle of funds affiliated with The Blackstone Group Inc., to issue and sell at closing (the "**Private Placement**" together with the MVE Acquisition, the "**Transaction**") for an aggregate purchase price of $275,000,000: (i) 250,000 shares of a newly designated 4.0% Series C Convertible Preferred Stock, par value $0.001 per share (the "**Series C Preferred Stock**"), at a price of $1,000 per share, for $250,000,000, and (ii) 675,536 shares of common stock of the Company, par value $0.001 per share ("**Common Stock**") for $25,000,000. The Company intends to use the net proceeds from the Private Placement to fund the Purchase Price, to pay certain fees and expenses related to the MVE Acquisition and for working capital purposes.

The Financing Agreement contains customary representations, warranties and covenants of the Company and the Purchaser. The Private Placement is expected to close (the "**Private Placement Closing**") substantially simultaneously with the Closing, subject to customary closing conditions, including, among others: (i) the continued accuracy of the representations and warranties contained in the Financing Agreement; (ii) the performance in all material respects by each party of its respective covenants and agreements under the Financing Agreement; and (iii) the closing of the MVE Acquisition either prior to or substantially simultaneously with the Private Placement Closing.

After the Private Placement Closing, subject to certain customary exceptions including transfer to permitted transferees, the Purchaser will be restricted from transferring the Series C Preferred Stock until the one year anniversary of the Private Placement Closing.

Designation of Series C Preferred Stock

The Series C Preferred Stock to be issued at the Private Placement Closing will have the powers, designations, preferences, and other rights set forth in the form of Certificate of Designation of the Series C Preferred Stock filed herewith as Exhibit B to the Financing Agreement (the "**Certificate of Designation**"). The Holders will be entitled to dividends on the original purchase price paid by the Purchaser at the rate of 4.0% per annum, paid-in-kind, accruing daily and paid quarterly in arrears. The Holders are also entitled to participate in dividends declared or paid on the Common Stock on an as-converted basis. The Series C Preferred Stock will rank senior to the Common Stock with respect to dividend rights and rights upon the voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the Company (a "**Liquidation**"). Upon a Liquidation, each share of Series C Preferred Stock would be entitled to receive an amount per share equal to the greater of (i) the purchase price paid by the Purchaser, plus all accrued and unpaid dividends and (ii) the amount that the holder of Series C Preferred Stock (each, a "**Holder**" and collectively, the "**Holders**") would have been entitled to receive at such time if the Series C Preferred Stock were converted into Common Stock (the "**Liquidation Preference**").

Conversion Rights

The Holder will have the right, at its option, to convert its Series C Preferred Stock, in whole or in part, into fully paid and non-assessable shares of Common Stock at a conversion price equal to $38.6152 per share subject to certain customary adjustments in the event of certain adjustments to the Common Stock.

After the second anniversary of the Private Placement Closing, subject to certain conditions, the Company may, at its option, require conversion of all of the outstanding shares of Series C Preferred Stock to Common Stock if, for at least 20 trading days during the 30 consecutive trading days immediately preceding the date the Company notifies the Holders of the election to convert, the closing price of the Common Stock is at least 150% of the conversion price.

Redemption Rights

The Company may redeem the Series C Preferred Stock for cash (i) within 6 months of the Private Placement Closing, up to 50,000 shares of the Series C Preferred Stock at a price equal to 125% of the purchase price paid by the Purchaser plus any accrued and unpaid dividends, (ii) at any time beginning five years after the Private Placement Closing (but prior to six years after the Private Placement Closing), all of the Series C Preferred Stock at a price equal to 105% of the purchase price paid by the Purchaser plus any accrued and unpaid dividends, and (iii) at any time beginning six years after the Private Placement Closing, all of the Series C Preferred Stock at a price equal to 100% of the purchase price paid by the Purchaser plus any accrued and unpaid dividends. Upon a "Fundamental Change" (involving a change of control or de-listing of the Company as further described in the Certificate of Designation), each Holder shall have the right to require the Company to redeem all or any part of the Holder's Series C Preferred Stock for an amount equal to the Liquidation Preference plus any accrued and unpaid dividends.

Voting & Consent Rights

The Holders generally will be entitled to vote with the holders of the shares of Common Stock on all matters submitted for a vote of holders of shares of Common Stock (voting together with the holders of shares of Common Stock as one class) on an as-converted basis, subject to certain Nasdaq voting limitations, if applicable.

Additionally, the consent of the Holders of a majority of the outstanding shares of Series C Preferred Stock will be required for so long as any shares of the Series C Preferred Stock remain outstanding for (i) amendments to the Company's organizational documents that have an adverse effect on the holders of Series C Preferred Stock and (ii) issuances by the Company of securities that are senior to, or equal in priority with, the Series C Preferred Stock, including any shares of the Company's Series A Preferred Stock or Series B Preferred Stock. In addition, for so long as 75% of the Series C Preferred Stock issued in connection with the Financing Agreement remains outstanding, consent of the Holders of a majority of the outstanding shares of Series C Preferred Stock will be required for (i) any voluntary dissolution, liquidation, bankruptcy, winding up or deregistration or delisting and (ii) incurrence by the Company of any indebtedness unless the Company's ratio of debt to LTM EBITDA (as defined in the Certificate of Designation) would be less than a ratio of 5-to-1 on a pro forma basis giving effect to such incurrence and the use of proceeds therefrom.

Purchaser Governance Rights

For so long as the Purchaser holds 66.67% of the Series C Preferred Stock issued to it under the Financing Agreement, the Purchaser will have the right to nominate for election one member to the board of directors of the Company (the "**Series C Director**"), provided that the Purchaser's initial nominee will be appointed to the Board of Directors at the Private Placement Closing.

Under the Financing Agreement, for so long as the Purchaser has the right to nominate a director for election to the , the Purchaser has agreed to vote all of the shares of Series C Preferred Stock and shares of Common Stock issuable upon conversion of the Series C Preferred Stock purchased pursuant to the Private Placement or any other shares of Common Stock owned by the Purchaser (i) in favor of each director nominated or recommended by the Board of Directors for election at any such meeting, (ii) against any stockholder nomination for director that is not approved and recommended by the Board of Directors for election at any such meeting, (iii) in favor of the Company's "say-on-pay" proposal and any proposal by the Company relating to equity compensation that has been approved by the Board of Directors or the Compensation Committee of the Board of Directors (or any successor committee, however denominated), (iv) in favor of the Company's proposal for ratification of the appointment of the Company's independent registered public accounting firm and (v) amendments to organizational documents in a manner that does not have an adverse effect on the holders of Series C Preferred Stock to increase the authorized shares of capital stock.

For so long as the Purchaser is entitled to nominate a director for election to the Board of Directors, the Purchaser will have certain customary access and information rights.

Purchaser Standstill

Additionally, for so long as the Purchaser has the right to designate or nominate a director to the Board of Directors, the Purchaser will be subject to certain standstill restrictions pursuant to which the Purchaser will be restricted, among other things and subject to certain customary exceptions, from (i) acquiring additional equity securities or securities exchangeable for or convertible into equity securities of the Company; (ii) seeking representation on the Board of Directors (beyond the representation provided for above); (iii) seeking to change or influence the policies or management of the Company (beyond their right to do so based on their representation on the Board of Directors); (iv) submitting any shareholder proposal to the Company; and (v) publicly proposing any change of control or other material transaction involving the Company; or supporting or encouraging any person in doing any of the foregoing.

Registration Rights Agreement

Holders of Series C Preferred Stock, Common Stock issuable upon conversion of Series C Preferred Stock and Common Stock issued to Purchaser pursuant to the Financing Agreement will have certain customary registration rights with respect to such shares of Common Stock issuable upon conversion of Series C Preferred Stock and such shares of Common Stock issued pursuant to the Financing Agreement pursuant to the terms of the Registration Rights Agreement, a form of which is attached as Exhibit C to the Financing Agreement (the "**Registration Rights Agreement**").

The foregoing description of the terms of the Series C Preferred Stock, the Financing Agreement, the Certificate of Designation, the Registration Rights Agreement and the transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Financing Agreement and the exhibits thereto, which is attached hereto as Exhibit 10.1, and is incorporated herein by reference.

The Financing Agreement has been filed to provide investors and securityholders with information regarding its terms and conditions. It is not intended to provide any other information about Purchaser or the Company. The Financing Agreement contains representations, warranties, and covenants of the parties thereto made to and solely for the benefit of each other, and such representations, warranties, and covenants may be subject to materiality and other qualifiers applicable to the contracting parties that differ from those that may be viewed as material to investors. The assertions embodied in those representations, warranties, and covenants are qualified by information in a confidential disclosure letter that the Company delivered in connection with the execution of the Financing Agreement and were made as of the date of the Financing Agreement and as of the Private Placement Closing, except those made as of a specified date. Accordingly, investors and securityholders should not rely on the representations, warranties, and covenants as characterizations of the actual state of facts. Moreover, information concerning the subject matter of the representations, warranties, and covenants may change after the date of the Financing Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

This Current Report on Form 8-K does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale would be unlawful.

Cautionary Statement Regarding Forward-Looking Information

Statements in this report which are not purely historical, including statements regarding the Company's intentions, hopes, beliefs, expectations, representations, projections, plans or predictions of the future are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words or phrases such as "believe," "may," "could," "will," "estimate," "continue," "anticipate," "intend," "seek," "plan," "expect," "should," "would" or similar expressions are intended to identify forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties.

These forward-looking statements include, but are not limited to, statements concerning the potential benefit of the Company's acquisition of the MVE cryobiological storage business, completion of the Private Placement and the estimated or anticipated future business, performance and results of operations following the Transaction. It is important to note that the Company's actual results could differ materially from those in any such forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, (1) the conditions to the closing of the MVE Acquisition or the Private Placement may not be satisfied; (2) the Transaction may involve unexpected costs, liabilities or delays; (3) the business of the Company may suffer as a result of uncertainty surrounding the Transaction; (4) the occurrence of any event, change or other circumstances that could give rise to the termination of the Purchase Agreement or the Financing Agreement; (5) risks and uncertainties associated with the effect of changing economic conditions, (6) trends in the products markets, (7) variations in the Company's cash flow, (8) market acceptance risks, (9) technical development risks and (10) other risks to the consummation of the MVE Acquisition or the Private Placement, including the risk that the MVE Acquisition or the Private Placement will not be consummated within the expected time period or at all. The Company's business could be affected by a number of other factors, including the risk factors listed from time to time in the Company's SEC reports including, but not limited to, the Company's 10-K for the year ended December 31, 2019, the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020 and any subsequent filings with the SEC. The Company cautions investors not to place undue reliance on the forward-looking statements contained in this report, which speak only as of the date of this report. Except as required by law, the Company disclaims any obligation, and does not undertake, to update or revise any forward-looking statements in this report.

Item 3.02 Unregistered Sales of Equity Securities

The information contained in Item 1.01 is incorporated herein by reference.

As described in Item 1.01, under the terms of the Financing Agreement, the Company has agreed to issue shares of Series C Preferred Stock and Common Stock to the Purchaser at the Private Placement Closing. This issuance and sale will be exempt from registration under the Securities Act pursuant to Section 4(a)(2) thereof. The Financing Agreement contains representations of the Purchaser that it is an "accredited investor" as defined in Rule 501 under the Securities Act and that the shares of Series C Preferred Stock and Common Stock are being acquired for investment purposes and not with a view to or for sale in connection with any distribution thereof.

Item 3.03 Material Modification to the Rights of Securities Holders

As described in Item 1.01, under the terms of the Financing Agreement, the Company has agreed to issue shares of Series C Preferred Stock to the Purchaser at the Private Placement Closing. The Series C Preferred Stock Certificate of Designations will entitle the Holders to certain rights that are senior to the rights of holders of the Common Stock, such as rights to certain distributions and rights upon liquidation of the Company. In addition, in connection with the Private Placement Closing, the Company will enter into the Registration Rights Agreement with the Purchaser relating to the registered resale of the Registrable Securities (as defined therein). The general effect of the issuance of the Series C Preferred Stock and entry into the Registration Rights Agreement upon the rights of the holders of Common Stock is more fully described in Item 1.01 of this Current Report on Form 8-K, which descriptions are incorporated by reference into this Item 3.03.

Item 7.01 Regulation FD Disclosure.

On August 25, 2020, the Company issued a press release announcing the signing of the Purchase Agreement. A copy of the Company's press release is furnished as Exhibit 99.1 and is incorporated herein by reference.

On August 25, 2020, the Company posted a slide presentation on its investor relations website regarding the MVE Acquisition. The Company's presentation is furnished as Exhibit 99.2 and is incorporated herein by reference.

All information in the press release and slide presentation is furnished and shall not be deemed "filed" with the Securities and Exchange Commission for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise be subject to the liability of that Section, and shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the Company specifically incorporated it by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	**Description**
2.1*	Purchase Agreement by and between Cryoport, Inc. and Chart Industries, Inc. dated as of August 24, 2020.
10.1*	Securities Purchase Agreement by and between Cryoport, Inc. and BTO Freeze Parent L.P. dated as of August 24, 2020.
99.1	Press release issued by Cryoport, Inc., dated August 25, 2020.
99.2	Investor Presentation posted by Cryoport, Inc., dated August 25, 2020.
104.1	Cover Page Interactive Data File (embedded within the inline XBRL document)

* Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K and the Company agrees to furnish supplementally to the Securities and Exchange Commission a copy of any omitted schedules or exhibits upon request.

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.

Cryoport, Inc.

Date: August 25, 2020

/s/ Robert Stefanovich
Robert Stefanovich
Chief Financial Officer

Exhibit 2.1

Execution Version

PURCHASE AGREEMENT

by and between

CHART INDUSTRIES, INC.

and

CRYOPORT, INC.

Dated as of August 24, 2020

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EXHIBITS

PURCHASE AGREEMENT

This PURCHASE AGREEMENT, dated as of August 24, 2020 (this "Agreement"), is by and between Chart Industries, Inc., a Delaware corporation ("Parent"), and Cryoport, Inc., a Nevada corporation ("Buyer").

RECITALS

WHEREAS, Chart Asia Investment Company Limited, a Hong Kong company and indirect wholly owned Subsidiary of Parent (the "Equity Seller"), owns all of the issued and outstanding equity interests of Chart Cryogenic Equipment (Chengdu) Co., Ltd., a Chinese company (the "Acquired Company");

WHEREAS, the following wholly owned Subsidiaries of Parent own certain assets related to the Business (as defined below): (i) Chart Inc., a Delaware corporation ("Chart US"), (ii) Chart Australia Pty. Ltd., an Australian proprietary limited company ("Chart Australia"), (iii) Cryo Diffusion S.A.S., a French *société par actions simplifiée* ("Chart France"), and (iv) Flow Instruments & Engineering GmbH, a German limited liability company ("Chart Germany" and, together with Chart US, Chart Australia and Chart France, the "Asset Sellers" and, the Asset Sellers together with the Equity Seller, "Sellers");

WHEREAS, in addition to its other businesses, Parent, through the Acquired Company and the Asset Sellers, is engaged in the business of researching, developing, testing, designing, manufacturing, storing, marketing, distributing and selling the Products (the "Business"); and

WHEREAS, Buyer and the Buyer Designees (as defined below) desire to purchase the Acquired Assets (as defined below) and the Purchased Interests (as defined below) and assume the Assumed Liabilities (as defined below) from the Sellers, and Parent desires to cause the Sellers to sell the Acquired Assets and Purchased Interests and assign the Assumed Liabilities to Buyer and the Buyer Designees, all upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, it is hereby agreed between Parent and Buyer as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **Definitions**. In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms.

"4062(e) Event" has the meaning specified in Section 5.14(d).

"Accounting Principles" means GAAP applied consistently; provided, however, that with respect to any matter as to which there is more than one generally accepted accounting principle under GAAP, "Accounting Principles" means the generally accepted accounting principles, procedures and policies applied in the preparation of the audited consolidated balance sheet of the Business dated as of December 31, 2019 included in Schedule 5.4.

"Acquired Assets" means all of the assets, properties and rights of Parent and its Subsidiaries, including the Asset Sellers, of every kind and description, wherever located, whether real, personal, mixed, tangible or intangible, whether owned or leased, whether or not specifically referred to herein or in any instrument or conveyance delivered pursuant hereto, and whether or not any of such assets have any value for any accounting purpose or are carried or reflected on or referred to in the Financial Statements, in each case to the extent Related to the Business and as the same shall exist on the Closing Date, excluding the Excluded Assets, but including, for the avoidance of doubt, the following:

(a) all inventories, including raw materials, works in process, semi-finished and finished products, stores, replacement and spare parts, packaging and labeling materials, and all other materials and supplies to be used in the production of finished goods, in each case to the extent Related to the Business;

(b) all machinery, equipment, furniture, furnishings, IT Assets (including Off-the-Shelf Software and the Software listed on Schedule 5.9(b) loaded on such IT Assets), materials, vehicles, tools and tooling assets, and other items of tangible personal property of every kind, in each case to the extent Related to the Business;

(c) the Owned Real Property;

(d) the Lease Agreements and each Contract to which Parent or any Asset Seller is a party (in each case to the extent Related to the Business), including the Contracts set forth on Schedule 5.11 (unless indicated otherwise on the Schedules) (the "Acquired Contracts");

(e) all Intellectual Property and Software Related to the Business, including the Intellectual Property and Software set forth on Schedules 5.9(a) and 5.9(b);

(f) all rights, claims, demands, rights of recovery, rights of set-off, credits, defenses, causes of action (including counterclaims) and all other rights to bring any Proceeding at law or in equity, in each case to the extent Related to the Business, the Acquired Assets or the Assumed Liabilities, including, but not limited to, any such items arising under warranties, guarantees, indemnities, offsets and all other claims and similar rights in favor of the Business;

(g) all books and records, including, among other things, (i) vendor lists, (ii) customer lists, (iii) a list of the names of the distributors for the Products, (iv) pricing lists for the Products, (v) marketing plans and other marketing-related information and materials, (vi) advertising, sales and promotional materials and (vii) quality control, vigilance and regulatory records, in each case only to the extent Related to the Business or the Affected Employees);

(h) all accounts, notes and other receivables, in each case to the extent Related to the Business, including, among other things, all portions of trade accounts receivables that represent sales Tax due from customers for Pre-Closing Tax Periods and all accounts receivable and other assets included in the Closing Date Working Capital (collectively "Receivables");

(i) all prepaid expenses, including all deposits, lease and rental payments Related to the Business;

(j) to the extent permitted by applicable Requirements of Law, all permits, licenses and authorizations (including Governmental Permits), in each case to the extent Related to the Business;

(k) all goodwill associated with the Business and any of the Acquired Assets; and

(l) all insurance proceeds actually received by Parent or any Asset Seller under any insurance policy written prior to the Closing related to any damage or loss with respect to any Acquired Asset that occurs between the date hereof and the Closing that is, or would have been but for such damage or loss, included in the Acquired Assets, other than (i) where insurance proceeds are directly or indirectly funded by Parent or any of its Affiliates through self-insurance or a similar arrangement or (ii) where such proceeds are applied by Parent or any of its Affiliates to acquire, or Parent or any of its Affiliates otherwise acquires, another asset included in the Acquired Assets.

"Acquired Company" has the meaning specified in the Recitals.

"Acquisition" has the meaning specified in Section 7.8.

"Affected Employees" has the meaning specified in Section 8.2(a).

"Affiliate" means, with respect to any specified Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such specified Person. For purposes of this definition, "control," when used with respect to any specified Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through ownership of voting securities or equity or ownership interests or by contract, credit arrangement or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. For the avoidance of doubt, the Acquired Company shall be considered an Affiliate of Parent prior to the Closing, and shall be considered an Affiliate of Buyer following the Closing.

"Agreement" has the meaning specified in the Preamble.

"Anti-Corruption Laws" has the meaning specified in Section 5.10(b)(i).

"Asset Sellers" has the meaning specified in the Recitals.

"Assumed Liabilities" means all of the Liabilities of the Asset Sellers of every kind and description Related to the Business or the Acquired Assets, in each case as the same shall exist on the Closing Date (including, for the avoidance of doubt, the Assumed PTO), other than the Excluded Liabilities.

"Assumed PTO" has the meaning specified in Section 8.2(e).

"Assumed Retention Bonus Agreements" has the meaning specified in Section 8.2(g).

"Auditors" means KPMG US LLP.

"Australia Allocation" means $1,730,000, which is in respect of the Acquired Assets to be sold by Chart Australia.

"Back-to-Back Arrangements" has the meaning specified Section 2.2(e)(i).

"Balance Sheet Date" has the meaning specified in Section 5.4(a).

"Ball Ground Buyer Premises" shall mean the portion of the premises currently subject to the Original Ball Ground Lease that is Related to the Business.

"Ball Ground Landlord" has the meaning set forth in Section 1.1.

"Ball Ground Lease Assignment" means an assignment and assumption of lease agreement, in form and substance reasonably acceptable to Parent and Buyer, evidencing Chart US's assignment to, and assumption by, Buyer or a Buyer Designee, at Closing, of the Ball Ground Lease.

"Ball Ground Sublease" means a sublease agreement, in form and substance reasonably acceptable to Parent and Buyer, pursuant to which Buyer or a Buyer Designee would sublease to Chart US (or an Affiliate thereof) the premises currently subject to the Original Ball Ground Lease (other than the Ball Ground Lease Buyer Premises) on terms and conditions consistent with the terms of the Original Ball Ground Lease (other than the premises and rent, it being acknowledged and agreed that the rent payable under the Ball Ground Sublease will be determined by the parties in good faith based on the percentage of the premises subject to the Ball Ground Lease to be subleased to Chart US (or an Affiliate thereof).

"**Base Purchase Price**" means $320,000,000.

"**Bill of Sale**" means the bill of sale, assignment and assumption agreement in respect of the Acquired Assets and Assumed Liabilities being sold and transferred hereunder by Chart US, in the form attached hereto as Exhibit A, with such other terms as the parties may mutually agree.

"Business" has the meaning specified in the Recitals.

"**Business Confidential Information**" means all information relating, directly or indirectly, to the Business or its products, markets, condition (financial or other), operations, assets, liabilities, results of operations, cash flows or prospects; provided, that in no event shall "Business Confidential Information" be deemed to include any information that (i) is generally available to the public through no breach of Parent of this Agreement, (ii) was disclosed to Parent or any of its Affiliates or representatives by a third party which, to the knowledge of such Persons, is not under any obligation to keep such information confidential or (iii) was independently developed by Parent or any of its Affiliates or representatives without use of such Business Confidential Information.

"Business Day" means any day other than a Saturday, Sunday or other day on which banking institutions located in New York, New York are authorized or obligated by applicable Requirements of Law to close.

"Business Employee" means, collectively (i) each individual who is employed by the Acquired Company, (ii) each individual who is employed by an Asset Seller who provides services primarily to or for the benefit of the Business, (iii) each UK Business Employee; (iv) and each other employee listed on Schedule 1.1(a).

"Buyer" has the meaning specified in the Preamble.

"Buyer 401(k) Plan" has the meaning specified in Section 8.2(h).

"Buyer Ancillary Agreements" means all agreements, instruments and documents being or to be executed and delivered by Buyer under this Agreement or in connection herewith.

"Buyer Designee" has the meaning specified in Section 2.2(d).

"Buyer Group Member" means Buyer and its Affiliates (including, after the Closing, the Acquired Company), and its and their respective directors, officers, employees, and their respective successors and assigns.

"**Buyer Nominees**" means the individual(s) to be nominated by Buyer and appointed as supervisor, legal representative, director, or officer, as applicable, of the Acquired Company, in each case effective from the Closing, the identities of which shall be notified by the Buyer to the Equity Seller in writing at least fifteen (15) days prior to the Closing Date.

"Buyer's Benefit Programs" has the meaning specified in Section 8.2(d).

"CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act or any similar applicable foreign, federal, state or local law.

"Cash and Cash Equivalents" means the aggregate amount of the Acquired Company's cash and cash equivalents (including marketable securities, short term investments and all lease and other security deposits posted by the Acquired Company) on hand or in bank accounts, as determined in accordance with the Accounting Principles; provided Cash and Cash Equivalents at Closing shall be no more than $2,000,000.

"CBA" has the meaning specified in Section 5.15(a).

"Chart Australia" has the meaning specified in the Recitals.

"Chart France" has the meaning specified in the Recitals.

"Chart Germany" has the meaning specified in the Recitals.

"Chart Marks" has the meaning specified in Section 8.5(a).

"Chart US" has the meaning specified in the Recitals.

"**China Allocation**" means $50,000,000, which is in respect of the Purchased Interests to be sold by the Equity Seller.

"**China Designee**" means the Buyer Designee (designated by Buyer in accordance with Section 2.2(d)) that shall acquire the Purchased Interests.

"**China Local Agreements**" means the equity transfer agreement and its supplementary agreement entered into by the Equity Seller and the China Designee in relation to the transfer of the Purchased Interests of the Acquired Company.

"Claim Notice" has the meaning specified in Section 11.3(a).

"Clients" has the meaning specified in Section 12.17(a).

"Closing" means the consummation of the transactions contemplated by this Agreement, upon the terms and subject to the conditions set forth herein.

"Closing Date" has the meaning specified in Section 3.1.

"Closing Date Cash" has the meaning specified in Section 2.4(a)(vi).

"Closing Date Debt" has the meaning specified in Section 2.4(a)(iv).

"Closing Date Transaction Expenses" has the meaning specified in Section 2.4(a)(v).

"Closing Date Working Capital" means the Working Capital calculated as of the close of business on the Business Day immediately preceding the Closing Date.

"Closing Date Working Capital Adjustment Amount" means (a) if Closing Date Working Capital is greater than the Working Capital Target, the positive amount equal to Closing Date Working Capital minus the Working Capital Target, (b) if Closing Date Working Capital is less than the Working Capital Target, the negative amount equal to Closing Date Working Capital minus the Working Capital Target, or (c) otherwise, $0.

"Closing Receivables" has the meaning specified in Section 8.7.

"COBRA" has the meaning specified in Section 5.14(g).

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

"Compliant" means, without giving effect to any supplements or updates, (a) the Required Information does not contain any untrue statement of a material fact or omit to state any material fact, in each case with respect to the Business, the Acquired Assets or Assumed Liabilities, necessary in order to make such Required Information not misleading, (b) no audit opinion with respect to any financial statements contained in the Required Information shall have been withdrawn, amended or qualified, and Parent's independent registered accounting firm has consented to or otherwise authorized the use in the Financing of their audit opinions related to the audited financial statements included in the Required Information and (c)(i) the financial statements and other financial information included in the Required Information that have been prepared by Parent are, and remain throughout the Marketing Period, sufficient to permit the Financing Sources (including underwriters, placement agents or initial purchasers) to receive customary comfort letters with respect to such financial information (including customary negative assurance comfort with respect to periods following the end of the latest fiscal year and fiscal quarter for which historical financial statements are included) on any date during the Marketing Period and (ii) Parent's independent registered accounting firm that has reviewed or audited (in each case to the extent required by Section 7.6(a)(iii)) such financial information, has delivered drafts of customary comfort letters, including customary negative assurance comfort, and such independent registered accounting firm has confirmed they are prepared to issue such comfort letter upon any pricing date and the closing relating to the Equity Financing occurring during the Marketing Period.

"Company Insurance Policies" has the meaning specified in Section 5.19.

"Company Intellectual Property" has the meaning specified in Section 5.9(c).

"Company Plans" has the meaning specified in Section 5.14(b).

"Company Registered Intellectual Property" has the meaning specified in Section 5.9(a).

"**Completion Date for SAMR Registration**" means the date on which the China Designee has been registered by SAMR as the Acquired Company's new sole shareholder.

"Competing Business Activities" means the design, manufacture, marketing or sale of any Product or of any service of the type provided by the Business during the three (3) years prior to the Closing Date.

"Confidentiality Agreement" means the letter agreement, dated as of May 19, 2020, by and between Buyer and Parent.

"Contracts" means all contracts, guaranties, leases, licenses, sublicenses, instruments, commitments, notes, bonds, mortgages, indentures, sales or purchase orders, invoices and other agreements.

"Copyrights" means United States and foreign registered copyrights, and pending applications to register the same, and all renewals, extensions, restorations and reversions thereof.

"**Counsel's Opinion**" has the meaning specified in Section 8.1(f)(iii).

"**Credit Support Obligations**" means letters of credit, guarantees, surety bonds and other credit support instruments issued by (a) Parent or any of its Affiliates (other than the Acquired Company) or (b) third parties on behalf of such Persons, in each case with respect to the Business.

"**Data Protection Laws**" means all applicable Requirements of Law concerning or otherwise relating to data protection, data privacy, data retention, data security, and/or the Acquired Company's or, with respect to the Business, any Asset Seller's collection, transmittal, storage, use, disclosure, sharing, selling, security, integrity, modification, deletion, destruction or other processing (collectively, "Processing") of Personal Information.

"Deed" has the meaning specified in Section 3.4(i)(i).

"DOJ" means the U.S. Department of Justice.

"Encumbrance" means any lien, adverse claim, charge, security interest, encumbrance, mortgage, deed of trust, hypothecation, option, right of first refusal, right of first offer, right-of-way, servitude, equitable interest, pledge, easement, encroachment, conditional or contingent sale or other title retention agreement, defect in title, rights of third parties, whether voluntarily incurred or arising by operation of law, and includes, without limitation, any Contract to give any of the foregoing in the future, or other restrictions of a similar kind.

"End Date" means December 31, 2020, or such later date to which Buyer and Parent may mutually agree in writing; provided, however, that if, on December 31, 2020, all of the conditions precedent set forth in Article IX have been satisfied (or would be satisfied at the Closing) other than the condition precedent set forth in Section 9.1(a), then the End Date shall automatically (without any further action by Buyer or Parent) be extended until September 1, 2021.

"Environmental Laws" means all applicable federal, foreign, state and local statutes, regulations, ordinances and other provisions having the force or effect of law, in each case, concerning worker health and safety (solely to the extent relating to exposure to Hazardous Materials) and pollution or protection of the environment (including those relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, Release, threatened Release, control or cleanup of any Hazardous Material), each as amended and in effect as of the date hereof.

"Environmental Matter" means any matter relating to (a) the Release or threatened Release of a Hazardous Material on, at, to, from or beneath a facility or real property or (b) violations of or Liabilities arising under applicable Environmental Laws.

"**Equity Commitment**" means one or more equity purchase agreements or equity commitment letters among Buyer and the financing sources party thereto (who shall be internationally recognized investment or commercial banks or financial institutions engaged in the business of providing equity financing in similar acquisition financings), in form and substance reasonably satisfactory to Buyer and subject only to conditions precedent customary for equity commitments for similar acquisition financings, to be entered into on or after the date hereof, as amended, supplemented or replaced in compliance with this Agreement, pursuant to which the financing sources party thereto agree to provide equity financing to Buyer or any of its Affiliates to pay a portion of the Purchase Price and other amounts to be paid pursuant to this Agreement and associated costs and expenses of the transactions contemplated hereby on the Closing Date.

"**Equity Financing**" means the equity financing consummated or intended to be consummated pursuant to the Equity Commitment, including the offering or private placement of equity securities contemplated by the Equity Commitment and any related engagement letter and including any purchase agreements or capital markets equity financing or equity or equity-related offerings undertaken in replacement of all or any portion of such financing.

"**Equity Financing Conditions**" means the conditions precedent set forth in the Equity Commitment.

"**Equity Financing Documents**" means the agreements, documents and certificates contemplated by the Equity Financing.

"Equity Seller" has the meaning specified in the Recitals.

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

"ERISA Affiliate" means any Person that, together with Parent, Sellers, the Acquired Company or any of their Affiliates, is or was, within the past six (6) years, treated as a single employer under Section 414 of the Code.

"Estimated Closing Date Cash" has the meaning specified in Section 2.4(b).

"Estimated Closing Date Debt" has the meaning specified in Section 2.4(b).

"Estimated Closing Date Transaction Expenses" has the meaning specified in Section 2.4(b).

"Estimated Closing Date Working Capital" has the meaning specified in Section 2.4(b).

"Estimated Closing Date Working Capital Adjustment Amount" means (a) if the Estimated Closing Date Working Capital is greater than the Working Capital Target, the positive amount equal to Estimated Closing Date Working Capital minus the Working Capital Target, (b) if the Estimated Closing Date Working Capital is less than the Working Capital Target, the negative amount equal to Estimated Closing Date Working Capital minus the Working Capital Target, or (c) otherwise, $0.

"Estimated Purchase Price" means an amount equal to (i) the Base Purchase Price, plus (ii) the Estimated Closing Date Working Capital Adjustment Amount (if the Estimated Closing Date Working Capital Adjustment Amount is a positive number), minus (iii) the absolute value of the Estimated Closing Date Working Capital Adjustment Amount (if the Estimated Closing Date Working Capital Adjustment Amount is a negative number), plus (iv) an amount equal to the Estimated Closing Date Cash, minus (v) an amount equal to the Estimated Closing Date Debt, and minus (vi) an amount equal to the Estimated Closing Date Transaction Expenses.

"**Excluded Assets**" means all assets, rights and properties of Parent and the Asset Sellers other than the Acquired Assets, including, for the avoidance of doubt:

(a) any rights in or to Parent's or any Asset Seller's franchise to be a corporation and its charter, corporate seal, minute books, stock books and other corporate records relating to its corporate existence and capitalization;

(b) any equity interest in Parent or any Asset Seller or in any other Person in which Parent or any Asset Seller owns any equity interest;

(c) the consideration to be delivered by Buyer to any Asset Seller pursuant to this Agreement and all other rights of any Asset Seller under this Agreement and the other documents and instruments to be executed and delivered pursuant hereto;

(d) any Cash and Cash Equivalents of Parent or any Asset Seller;

(e) any intercompany receivables of Parent or any Asset Seller payable by an Affiliate thereof;

(f) any refunds or credits with respect to any Taxes paid or incurred by Parent or any Asset Seller, together with any related interest received or due from the relevant Tax Authority, and any prepaid Taxes of Parent or any Asset Seller;

(g) any rights of Parent or any Asset Seller in or to any Intellectual Property (other than the Intellectual Property included in the Acquired Assets) or any derivation thereof and any corporate symbols or logos related thereto, including, for the avoidance of doubt, the www.chartindustries.com domain name and the Chart Marks;

(h) without duplication, any prepaid items, claims for contribution, indemnity rights and similar claims and causes of action and other intangible rights to the extent any of the foregoing relate exclusively or primarily to any Excluded Asset or to any Excluded Liability, and all privileges related thereto;

(i) Parent's or any Asset Seller's rights in, to and under the Parent Insurance Policies;

(j) any books, records, files or other embodiments of information relating to any Excluded Asset or any Excluded Liability;

(k) Parent's or any Asset Seller's rights, claims or causes of action against third parties relating to any Excluded Asset or any Excluded Liability;

(l) all assets held in trust for the purpose of funding any Seller Plan; and

(m) each of the assets set forth on Schedule 1.1(b).

"**Excluded Employee Liabilities**" means all Liabilities of Parent, Sellers and their respective Affiliates (other than the Acquired Company): (a) relating to any current or former officer, employee, consultant, independent contractor, manager or director thereof (or dependent or beneficiary of any such individual) who does not become an Affected Employee for any reason, regardless of when arising, (b) relating to any current or former officer, employee, consultant, independent contractor, manager or director thereof (or dependent or beneficiary of any such individual) who does become an Affected Employee, to the extent arising prior to the Closing Date, and (c) arising at any time under any Seller Plan (other than any Assumed Retention Bonus Agreement); except, with respect to clause (c), to the extent included in the Closing Date Working Capital. For the avoidance of doubt, the Assumed PTO and any Liability arising after the Closing under the Assumed Retention Bonus Agreements shall not be an "Excluded Employee Liability".

"**Excluded Liabilities**" means all Liabilities of Parent and the Asset Sellers other than the Assumed Liabilities, including, for the avoidance of doubt:

(a) any intercompany Liabilities owed by Parent or an Asset Seller to an Affiliate thereof;

(b) any Indebtedness of Parent or any Asset Seller;

(c) any Liabilities of Parent or any Asset Seller (i) relating to or arising out of any of the Excluded Assets, (ii) relating to or arising out of the distribution to, or ownership by, Parent or any Asset Seller of any Excluded Asset or (iii) associated with the realization of the benefits of any Excluded Asset, whether arising before, on or after the Closing Date;

(d) any Transaction Expenses of Parent or any Asset Seller;

(e) any Liabilities related to the Indemnifiable Proceedings;

(f) any Indemnified Taxes of Parent or any Asset Seller (other than those that constitute Excluded Taxes);

(g) any Excluded Employee Liabilities; and

(h) any Liabilities of Parent or any Asset Seller under this Agreement and the other documents and instruments to be executed and delivered pursuant hereto.

"Excluded Taxes" has the meaning specified in Section 8.1(a)(i).

"Expenses" means any and all reasonable out-of-pocket expenses actually incurred in connection with defending or asserting any Proceeding incident to any matter indemnified against hereunder (including court filing fees, court costs, arbitration fees or costs, witness fees and reasonable fees and disbursements of legal counsel, expert witnesses, accountants and other professionals).

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

"Final Allocation" has the meaning specified in Section 8.1(e).

"Financial Statements" has the meaning specified in Section 5.4(a).

"Financing Failure Event" means any of the following: (a) the commitments with respect to all or any portion of the Equity Financing, once received, expiring or being terminated, (b) for any reason other than the funding of the Equity Financing or another Financing, all or any portion of the Equity Financing becoming unavailable or (c) a material breach or repudiation by any party to the Equity Commitment, in each case, other than as contemplated by the Equity Commitment.

"Financing Sources" means the agents, arrangers, lenders and other entities that have committed or been engaged to provide or arrange the Equity Financing or other Financings in connection with the transactions contemplated hereby, including the parties to the Equity Commitment, any joinder agreements or purchase agreements entered pursuant thereto or relating thereto, together with their respective affiliates and their and their respective affiliates' current, former or future officers, directors, employees, partners, trustees, shareholders, equityholders, managers, members, limited partners, controlling Persons, agents and representatives and respective successors and assigns of the foregoing Persons.

"Fixing Rate" means, in relation to a specified date, the average closing rate as published by Bloomberg (pursuant to the Bloomberg Fix function ('BFIX' function)) for the three (3) Business Days immediately preceding such specified date.

"France Allocation" means $30,000, which is in respect of the Acquired Assets to be sold by Chart France.

"FTC" means the U.S. Federal Trade Commission.

"GAAP" means, as of any particular time, United States generally accepted accounting principles in effect at such time.

"Germany Allocation" means $3,350,000, which is in respect of the Acquired Assets to be sold by Chart Germany.

"Governmental Approval" means any authorization, consent, clearance, waiting period expiration or termination, or approval issued by, or obtained from, any Governmental Body.

"Governmental Body" means any federal, foreign, multinational, state, provincial, local or other government or political subdivision thereof, governmental authority, regulatory or administrative agency or body, legislature, parliament, governmental commission, department, board, bureau, agency or instrumentality, arbitrator, court or tribunal, including self-regulated organizations or other non-governmental regulatory or quasi-governmental authority, or any other entity exercising executive, legislative, judicial, regulatory, taxing, or administrative functions of or pertaining to government.

"Governmental Filing" means any registration, filing, notification, notice or application with or to any Governmental Body.

"Governmental Permits" has the meaning specified in Section 5.7.

"Hazardous Material" means any contaminant, pollutant, or hazardous or toxic substance or waste, as such terms are defined under Environmental Laws.

"Health Care Laws" means the U.S. Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.), and any comparable state, local, federal or foreign Requirements of Law, including, without limitation, the FDA's regulations at 21 CFR Part 820 (the "Quality System Regulation"), each as amended from time to time.

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

"Inactive Employee" has the meaning specified in Section 8.2(a).

"Indebtedness" means the aggregate amount of outstanding indebtedness for borrowed money, calculated in accordance with GAAP, plus any accrued interest thereon.

"Indemnifiable Proceedings" means the Proceedings set forth on Schedule 1.1(c) hereto and any other Proceedings that are commenced by a third party prior to the Closing and are Related to the Business.

"Indemnified Party" has the meaning specified in Section 11.3(a).

"Indemnified Taxes" has the meaning specified in Section 8.1(a)(i).

"Indemnitor" has the meaning specified in Section 11.3(a).

"Intellectual Property" means Copyrights, all published and unpublished works of authorship, if any, whether copyrightable or not, Software, websites, domain names, content, images, graphics, text, photographs, artwork, audiovisual works, sound recordings, graphs, drawings, reports, analyses and writings, any derivative works of any of the foregoing, and all copyrights therein and thereto with respect to any of the foregoing, Patent Rights, unpatented inventions and improvements, Trademarks, unregistered trademarks, service marks and trade names, trade dress, logos, artwork, designs, slogans, symbols, DBAs, fictional names and other source or business identifiers, and Trade Secrets.

"Interim Financial Statements" has the meaning specified in Section 7.6(a)(iii)(B).

"Interim Quarterly Financial Statements" has the meaning specified in Section 7.6(a)(iii)(A).

"IP Assignment Agreements" means the intellectual property assignment and assumption agreements in the form attached hereto as Exhibit B, with such other terms as the parties may mutually agree.

"IT Assets" means the computer systems, servers, network equipment and other equipment, hardware and Software owned (or purported to be owned), leased or licensed by the Asset Sellers or the Acquired Company, in each case that are Related to the Business.

"Knowledge of Sellers" means, as to a particular matter, the knowledge of the following individuals, in each case, after reasonable due inquiry: Jillian C. Evanko, Scott W. Merkle, Herbert G. Hotchkiss, Seth Adams, Frank Roger Bies III, Hanlin Feng, Jason K. Madsen, Doug Wilcox, Keith Blalock, Dailian Song and Zheng Zhiming.

"Lease Agreements" has the meaning specified in Section 5.8(c).

"Leased Real Property" has the meaning specified in Section 5.8(c).

"Liability" means any liability, debt, obligation, loss, damage, claim, cost, expense or other charge (including costs of investigation and defense and attorney's fees, costs and expenses), in each case, whether direct or indirect and whether accrued or contingent.

"**Local Agreements**" shall have the meaning set forth in Section 2.3(a).

"Losses" means any and all out-of-pocket losses, settlement payments, awards, judgments, fines, penalties, damages, expenses, deficiencies, Taxes or other charges and reasonable and out-of-pocket costs and expenses (including reasonable and out-of-pocket legal and accounting fees and expenses); provided, that Losses shall not include punitive, exemplary, incidental or special damages, unless such amounts are actually paid to a third party (i.e., not a Parent Group Member or a Buyer Group Member).

"Marketing Period" means the first period of twenty (20) consecutive Business Days commencing on or after the date hereof throughout which and on the first and last day of which Buyer shall have received the Required Information and the Required Information is and remains Compliant; provided that, (a) November 26, 2020 to November 28, 2020 shall not constitute Business Days, (b) the Marketing Period may not commence until on or after September 8, 2020 and (c) if the Marketing Period has not been completed on or prior to December 18, 2020, then it may not commence until on or after January 4, 2021. Notwithstanding the foregoing, the Marketing Period shall not commence and shall be deemed not to have commenced if, on or at any time prior to the completion of such twenty (20) consecutive Business Day period, (i) Parent's independent registered accounting firm shall have withdrawn or qualified its authorization letter or audit opinion with respect to any financial statements contained in the Required Information, in which case the Marketing Period shall not be deemed to commence until the time at which, as applicable, a new authorization letter or unqualified audit opinion is issued with respect to the consolidated financial statements for the applicable periods by the Parent's independent registered accounting firm or another independent registered accounting firm acceptable to Buyer or (ii) Parent or its independent registered accounting firm indicates its intent to, or determined that it must, restate any financial statements or material financial information included in the Required Information, in which case the Marketing Period shall be deemed not to commence unless and until such restatement has been completed and the applicable Required Information has been amended or Parent has announced that it has concluded that no restatement shall be required. If the Required Information is not Compliant throughout and on the first and the last day of such period, then a new twenty (20) consecutive Business Day period shall commence upon Parent receiving updated Required Information that is Compliant and the other conditions set forth in this definition having been met. Notwithstanding the foregoing or anything to the contrary in this Agreement, the Marketing Period shall end on the earlier of (x) any earlier date that is the date on which the full amount of the Equity Financing (together with any Financing replacing any portion of the Equity Financing) has been received by Buyer if such date is prior to the end of the applicable twenty (20) consecutive Business Day period or (y) the date that is five (5) Business Days prior to the End Date.

"Marks Transition Period" has the meaning specified in Section 8.5(b).

"Material Adverse Effect" means any event, change, development, circumstance, condition, state of facts or occurrence that individually or in the aggregate is, or would reasonably be expected to be, materially adverse to (x) the condition (financial or otherwise), assets, properties, or liabilities of the Business, or results of operations of the Business (taken as a whole), or (y) the ability of Parent or Sellers to perform their obligations or consummate the transactions contemplated hereby, but shall exclude any prospects and shall also exclude any event, change, development, circumstance, condition, state of facts or occurrence to the extent resulting or arising from: (a) any change or prospective change in any applicable Requirements of Law or GAAP or interpretation thereof; (b) any change in general economic conditions in the industries or markets in which the Business operates or affecting the United States of America or any foreign economies in general; (c) any change made by any Governmental Body that is generally applicable to the industries or markets in which the Business operates; (d) the announcement of this Agreement and/or the consummation of the transactions contemplated hereby; (e) any action that is consented to or requested by Buyer in writing; (f) any action expressly required by, or the failure to take any action expressly prohibited by this Agreement; (g) any national or international political or social conditions, including the engagement by the United States of America or any foreign government in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States of America or any foreign government or any of their respective territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States of America or any foreign government; (h) any acts of God, including any earthquakes, hurricanes, tornados, floods, tsunamis or other natural disasters, or any other damage to or destruction of assets caused by casualty; (i) any epidemic, pandemic, disease outbreak (including, for the avoidance of doubt, COVID-19) or other health crisis or public health event; and (j) any failure of the Business to meet internal or published projections, estimates or forecasts of revenues, earnings or other measures of financial or operating performance for any period; provided, that the underlying causes of such failure (subject to the other provisions of this definition of "Material Adverse Effect") shall not be excluded; provided, however, that in the case of each of clauses (a), (b), (c) and (g) of the foregoing, any such event, change, circumstance or occurrence shall not be excluded to the extent that it has or would reasonably be expected to have a disproportionate adverse effect on the condition (financial or otherwise), assets, properties, or liabilities of the Business, or results of operations of the Business (taken as a whole) relative to other companies operating in the same industry in which the Business operates.

"Material Contracts" has the meaning specified in Section 5.12.

"**Material Customer**" has the meaning specified in Section 5.21.

"**Material Supplier**" has the meaning specified in Section 5.21.

"**Multiemployer Plans**" has the meaning specified in Section 5.14(e).

"New Ball Ground Lease" has the meaning specified in Section 2.2(e)(ii).

"Non-US Plan" means each Plan that provides compensation or benefits to or for the benefit of any Service Providers located outside of the U.S.

"Objecting Employees" has the meaning specified in Section 8.2(k)(ii).

"OFAC" has the meaning specified in Section 5.10(b)(i).

"**Off-the-Shelf Software**" has the meaning specified in Section 5.9(b).

"Order" means any judgment, injunction, award, decree, ruling, stipulation, determination, decision, writ or other order of any Governmental Body.

"**Original Ball Ground Lease**" means that certain Lease Agreement, dated as of October 21, 2016, by and between JLS-KTS, LLC, a Georgia limited liability company, as landlord (the "Ball Ground Landlord"), and Chart US, as tenant, as amended by that certain First Amendment to Lease Agreement, dated as of November 1, 2016, as further amended by that certain Second Amendment to Lease Agreement, dated February 23, 2017, and as further amended by that certain Third Amendment to Lease Agreement, dated May 31, 2017.

"**Organizational Documents**" means, with respect to any Person that is not an individual, such Person's charter, certificate or articles of incorporation or formation, bylaws, memorandum or articles of association, operating agreement, limited liability company agreement, partnership agreement, limited partnership agreement, limited liability partnership agreement or other similar constituent or organizational documents of such Person.

"Owned Real Property" has the meaning specified in Section 5.8(a).

"Parent" has the meaning specified in the Preamble.

"Parent 401(k) Plan" has the meaning specified in Section 8.2(g).

"Parent Ancillary Agreements" means all agreements, instruments and documents being or to be executed and delivered by Parent and/or the Sellers under this Agreement or in connection herewith.

"Parent Fundamental Representations" has the meaning specified in Section 11.1(a).

"Parent Group Member" means Parent and its Affiliates (including Sellers), and its and their respective directors, officers, employees, and their respective successors and assigns.

"Parent Insurance Policies" has the meaning specified in Section 5.19.

"Parent Legal" has the meaning specified in Section 12.17(a).

"Parent's Counsel" has the meaning specified in Section 12.16(a).

"Patent Rights" means United States and foreign patents, patent applications, continuations, continuations-in-part, divisions or any reissues, reexaminations, substitutes and extensions of any of the foregoing.

"PBCG" has the meaning specified in Section 5.14(d).

"Pension Plans" has the meaning specified in Section 5.14(d).

"Permitted Encumbrances" means, collectively, (a) liens for Taxes and other governmental charges and assessments which are not yet due and payable or are being contested in good faith by the appropriate proceedings for which a reserve has been established in accordance with the Accounting Principles on the Financial Statements; (b) with respect to the Leased Real Property, liens of landlords and, with respect to all Real Property, liens of carriers, warehousemen, mechanics and materialmen and other similar liens arising in the ordinary course of business or pursuant to Requirements of Law for sums not yet due and payable; (c) non-monetary Encumbrances on property which do not, individually or in the aggregate, materially detract from the value of or materially impair the existing use of the property affected by such Encumbrance; (d) pledges or deposits to secure obligations under workers' compensation, unemployment insurance or other types of social security or similar Requirements of Law; (e) Requirements of Law relating to zoning, building and other land use that affect the Owned Real Property or the Leased Real Property, in each case that are not violated by the current use, occupancy or activity conducted thereon by the Acquired Company or the Asset Sellers, as applicable; (f) Encumbrances that affect the underlying fee interest of any Leased Real Property; and (g) Encumbrances that will be released in full in connection with the Closing.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Body.

"Personal Information" means, to the extent regulated by any Data Protection Law applicable to the Business, (a) information and data concerning an identified or identifiable natural person (including any information specifically identified in any privacy policy of the Asset Sellers or the Acquired Company as "personally identifiable information") in paper, electronic or any other form; and (b) any data collected from an IP address, software or by any other means that can be used to identify or contact an individual to predict or infer the preferences, interests or other characteristics of an individual user of a device.

"Plan" means (a) any "employee pension benefit plan" as defined in Section 3(2) of ERISA, (b) any "employee welfare benefit plan" as defined in Section 3(1) of ERISA, (c) any "employee benefit plan," as defined in Section 3(3) of ERISA, or (d) any employment, equity incentive, cash incentive, bonus, deferred compensation, pension, profit-sharing, savings, redundancy, retirement, severance, health, welfare, life insurance, fringe benefit, other compensation and/or benefit plan, policy, program, agreement or arrangement that, in each case, is maintained, sponsored or contributed to by the Acquired Company or to which Parent, Sellers or any of their respective Affiliates (including the Acquired Company) contributes or has any obligation or liability with respect to any Service Provider, other than any plan, program, policy or arrangement which is maintained by a Governmental Body.

"**Post-Closing Tax Period**" means any Tax period beginning after the Closing Date and that portion of any Straddle Period beginning after the Closing Date.

"PRC" means the People's Republic of China, but solely for the purposes of this Agreement and the other Parent Ancillary Agreements excluding the Hong Kong Special Administrative Region, the Macau Special Administrative Region and Taiwan.

"**PRC Capital Gains Taxes**" means any PRC Taxes imposed with respect to the transactions contemplated by this Agreement under the current Corporate Income Tax Law of the PRC, or any successor Requirements of Law thereto.

"Pre-Closing Insurance Matters" has the meaning specified in Section 8.4(b).

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

"Preliminary Cash Determination" has the meaning specified in Section 2.5(a)(A)(2).

"Preliminary Closing Statement" has the meaning specified in Section 2.5(a)(B).

"Preliminary Debt Determination" has the meaning specified in Section 2.5(a)(A)(3).

"Preliminary Purchase Price Determination" has the meaning specified in Section 2.5(a)(B).

"Preliminary Transaction Expenses Determination" has the meaning specified in Section 2.5(a)(A)(4).

"Preliminary Working Capital Determination" has the meaning specified in Section 2.5(a)(A)(1).

"Proceeding" means any claim, demand, charge, complaint, action, suit, litigation, arbitration, proceeding, hearing, audit, review or investigation, whether judicial or administrative, by or before any Person or Governmental Body.

"Processing" has the meaning set forth in Section 1.1.

"Products" means the cryobiological products of the Business set forth on Exhibit C attached hereto and any discontinued cryobiological products of the Business.

"**Property Taxes**" means all real property Taxes, personal property Taxes and similar ad valorem Taxes.

"Purchase Price" has the meaning specified in Section 2.4(a).

"Purchased Interests" has the meaning set forth in Section 2.1.

"**Quality System Regulation**" has the meaning set forth in Section 1.1.

"**REA**" means a reciprocal easement agreement for ingress and egress over the driveway located partially on the New Prague Facility and partially on Chart US's real property located adjacent to the New Prague Facility, which reciprocal easement agreement shall provide both the New Prague Facility and such adjacent real property with the right to use such driveway for ingress and egress and shall be in a form reasonably acceptable to Parent and Buyer. For the avoidance of doubt, the REA shall be a Permitted Encumbrance hereunder.

"Real Property" has the meaning specified in Section 5.8(b).

"**Relate**" or "**Related**" means (i) used primarily in, or (ii) arising, directly or indirectly, primarily out of the operation or conduct of, in each case, the Business as conducted by Parent, the Acquired Company or any Asset Seller.

"Related Party" has the meaning specified in Section 12.15.

"Related Party Contract" has the meaning specified in Section 5.18.

"Release" means the release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, leaching or migration of a Hazardous Material into the environment.

"Replacement Financing" has the meaning specified in Section 7.7(b).

"Replacement Financing Documents" has the meaning specified in Section 7.7(b).

"Required Information" means, collectively, the Financial Statements and the Interim Financial Statements from and after the date such Interim Financial Statements are delivered by Parent to Buyer in accordance with Section 7.6.

"Requirements of Law" means any laws, statutes, regulations, rules, codes, constitutions, Orders, treaties, common laws, judgments, decrees, ordinances and other requirements or rules of law enacted, adopted, issued or promulgated by any Governmental Body.

"Retention Bonuses" means the retention bonuses payable pursuant to the Assumed Retention Bonus Agreements.

"SAFE" means the PRC State Administration of Foreign Exchange, its competent local counterpart or any competent bank delegated by the PRC State Administration of Foreign Exchange to administer foreign exchange registrations.

"Safety Notices" has the meaning specified in Section 5.20(b).

"**SAMR**" means the PRC State Administration for Market Regulation or its local counterparts.

"Sanctioned Countries" has the meaning specified in Section 5.10(b)(iii).

"Sanctioned Persons" has the meaning specified in Section 5.10(b)(iii).

"Schedules" means the schedules delivered by Parent to Buyer simultaneously with the execution and delivery of this Agreement and which form a part of this Agreement.

"SDN" has the meaning specified in Section 5.10(b)(iii).

"Seller Plan" means each Plan maintained or sponsored by Parent, any Seller or any of their respective Affiliates (other than the Acquired Company) (excluding, for clarity, any Company Plan).

"Sellers" has the meaning specified in the Recitals.

"Service Providers" means, collectively, (i) the Business Employees, (ii) all individual independent contractors, individual consultants, managers and directors of the Acquired Company, and (iii) all individual independent contractors, individual consultants, managers and directors of an Asset Seller who provide services primarily to or for the benefit of the Business.

"Software" means all computer software programs and software systems, databases, compilations, tool sets, libraries, and compilers, and related documentation and materials, whether in source code, object code or human readable form.

"Straddle Period" means any taxable year or period beginning on or before and ending after the Closing Date.

"Sublicense Agreement" means a sublicense agreement, by and between Chart US and Buyer, containing the terms and conditions set forth on Schedule 1.1(d), in each case, in form and substance reasonably satisfactory to Parent and Buyer.

"Subsidiary" of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person or by another Subsidiary of such first Person.

"Tax" means (a) any federal, state, local or foreign net income, gross income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, value added, transfer or excise tax, windfall profit, severance, production, stamp or environmental tax or (b) any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Tax Authority of any Governmental Body, whether disputed or not.

"Tax Authority" means any Governmental Body having or purporting to exercise jurisdiction with respect to any Tax.

"Tax Benefit" has the meaning specified in Section 11.6(a).

"Tax Contests" has the meaning specified in Section 8.1(c)(i).

"Tax Return" means any return, report or similar statement filed or required to be filed with respect to any Tax (including any attached schedules), including any information return, claim for refund, amended return or declaration of estimated Tax.

"**Title Company**" means the national office of First American National Title Insurance Company.

"Title Policy" has the meaning specified in Section 3.4(i)(iii).

"Third Person Claim" has the meaning specified in Section 11.4(a).

"Trade Control Laws" has the meaning specified in Section 5.10(b)(i).

"Trade Secrets" means (i) confidential information, know-how, concepts, methods, processes, formulae, algorithms, reports, data, customer lists, mailing lists, and business plans, and (ii) any other proprietary information that provides the owner with a competitive advantage and qualifies as "trade secrets" under applicable Requirements of Law.

"Trademarks" means registered United States federal, state and foreign trademarks, service marks and trade names, and pending applications to register the foregoing, including any renewals and extensions of any of the foregoing.

"Transaction Engagements" has the meaning specified in Section 12.17(a).

"Transaction Expenses" means any fees, costs and expenses incurred or subject to reimbursement by Parent and its Affiliates, in each case in connection with the transactions contemplated by this Agreement, including (a) any brokerage fees, commissions, finders' fees, or financial advisory fees, and, in each case, related costs and expenses; (b) any fees, costs and expenses of counsel, accountants or other advisors or service providers; and (c) any fees, costs and expenses or payments related to any Parent equity award held by or granted to a Service Provider, any transaction bonus, change-of-control payment, severance payments, retention payments or other payments of compensation payable or made to any Service Provider (including the employer portion of any employment Taxes related to such payments imposed on such amounts), in each case solely as a result of the execution of this Agreement or in connection with the consummation of the transactions contemplated by this Agreement, regardless of whether such payments are made prior to, at, or following the Closing. For the avoidance of doubt, the Retention Bonuses shall not be Transaction Expenses and shall instead by reimbursed by Parent to Buyer in accordance with Section 8.2(m).

"**Transfer Taxes**" has the meaning specified in Section 8.1(a)(v).

"**Transferring Employees**" has the meaning specified in Section 8.2(a).

"**Transferring French Employees**" has the meaning specified in Section 8.2(k).

"Transferring German Employees" has the meaning specified in Section 8.2(k).

"Transition Services Agreement" means a transition services agreement, in the form attached hereto as Exhibit D, with such other terms as the parties may mutually agree.

"**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 of the United Kingdom.

"**UK Business Employees**" means the individuals listed on Schedule 1.1(e).

"US Allocation" means $264,890,000, which is in respect of the Acquired Assets to be sold by Chart US.

"VAT" means (i) any Tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added Tax (EC Directive 2006/112); and (ii) any other Tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such Tax referred to in (i), or imposed elsewhere.

"Waiving Parties" has the meaning specified in Section 12.17(c).

"Working Capital" means (a) the consolidated current assets of the Business (excluding Cash and Cash Equivalents, Tax assets, and intercompany receivables between and among Parent and its Affiliates), minus (b) the consolidated current liabilities of the Business (excluding Indebtedness, Transaction Expenses, Tax liabilities, and intercompany payables among Parent and its Affiliates), in each case calculated in accordance with Exhibit E and the Accounting Principles.

"**Working Capital Target**" means $19,868,701.58.

Section 1.2 Interpretive Matters. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation," (b) the word "or" is not exclusive and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to Articles, Sections, Exhibits and Schedules mean the Articles and Sections of, and the Exhibits and Schedules attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement, as applicable; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Schedules and Exhibits referred to herein and attached hereto shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. Titles to Articles and headings of Sections are inserted for convenience of reference only and shall not be deemed a part of or to affect the meaning or interpretation of this Agreement. All references to days shall be to calendar days unless Business Days are specified. All references to "dollars" or "$" shall mean United States Dollars. Where any group or category of items or matters is defined collectively in the plural number, any item or matter within such definition may be referred to using such defined term in the singular number, and vice versa.

ARTICLE II

PURCHASE AND SALE; PURCHASE PRICE

Section 2.1 **Purchased Interests.** Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Parent shall cause the Equity Seller to sell and transfer to Buyer, and Buyer shall purchase and accept from the Equity Seller, all right, title and interest in and to all of the issued and outstanding equity interests of the Acquired Company (the "Purchased Interests") free and clear of all Encumbrances (other than any Encumbrances under applicable securities laws). Upon the Closing, Buyer shall enjoy all the benefits and assume all the obligations as the sole shareholder of the Acquired Company associated with the acquisition of the Purchased Interests.

Section 2.2 **Acquired Assets and Assumed Liabilities**.

(a) Acquired Assets. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Parent shall, and shall cause each Asset Seller to, sell, convey, assign and transfer to Buyer, and Buyer shall purchase, acquire and accept from each such Asset Seller, as applicable, all right, title and interest in and to all of the Acquired Assets free and clear of all Encumbrances other than Permitted Encumbrances. Notwithstanding the foregoing, Parent shall not, and shall cause each Asset Seller not to, sell, convey, assign or transfer to Buyer, and Buyer shall not purchase, acquire or accept from Parent or any Asset Seller, any of the Excluded Assets. All risk of loss with respect to the Acquired Assets (whether or not covered by insurance) shall be on Parent and the applicable Asset Seller up to the time of the Closing, whereupon such risk of loss with respect to the Acquired Assets conveyed at the Closing shall pass to Buyer.

(b) Assumed Liabilities. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Parent shall, and shall cause each Asset Seller to, transfer to Buyer, and Buyer shall assume and agree to pay, perform and discharge, as and when due, all of the Assumed Liabilities. Notwithstanding the foregoing, Parent shall not, and shall cause each Asset Seller not to, transfer to Buyer, and Buyer shall not assume, nor be deemed to have assumed, or be obligated to pay, perform or otherwise discharge any of the Excluded Liabilities. Parent and the Asset Sellers, as applicable, shall at all times remain liable to pay, perform and discharge when due, all Excluded Liabilities.

(c) Post-Closing Asset and Liability Transfers (Wrong Pockets). At any time following the Closing, if the parties hereto determine that any assets, rights, properties or Liabilities that properly constitute Acquired Assets or Assumed Liabilities were not transferred to Buyer at Closing, Parent shall use commercially reasonable efforts to promptly transfer and deliver (or to cause to be transferred and delivered) such assets, rights, properties or Liabilities to Buyer or, at Buyer's request, an Affiliate of Buyer without the payment of any further consideration therefor. At any time following the Closing, if the parties determine that any assets, rights, properties or Liabilities that did not properly constitute Acquired Assets or Assumed Liabilities were inadvertently transferred to Buyer at Closing, Buyer shall use commercially reasonable efforts to promptly transfer and deliver (or to cause to be transferred and delivered) such assets, rights, properties or Liabilities to Parent or, at Parent's request, an Affiliate of Parent without the payment of any further consideration therefor.

(d) Designation of Affiliates. To the extent that any of the Acquired Assets are under the control of any of Parent's Affiliates (other than the Asset Sellers), Parent shall cause such Affiliates to promptly take such legal action as may be necessary to consummate the transfer to Buyer and its Affiliates of such Acquired Assets under terms and conditions which are consistent with and subject to the terms of this Agreement. Prior to the Closing, Buyer may designate one or more Affiliates (each, a "Buyer Designee") to, at the Closing, (i) acquire all or part of the Acquired Assets or Purchased Interests, (ii) assume all or part of the Assumed Liabilities or (iii) pay a designated portion of the Purchase Price pursuant to Section 2.4, in which event all references herein to Buyer will be deemed to refer to such Affiliates, as appropriate; provided, however, that no such designation will in any event limit or affect the obligations of Buyer under this Agreement to the extent not performed by such Affiliates.

(e) Acquired Assets and Assumed Liabilities Subject to Third-Party Consent; Ball Ground Lease.

(i) To the extent that the sale, assignment, transfer, conveyance or delivery or attempted sale, assignment, transfer, conveyance or delivery to Buyer (or any Buyer Designee) of any Acquired Asset or Assumed Liability is prohibited by any applicable Requirements of Law or would require any governmental or third-party authorizations, approvals, consents or waivers and such authorizations, approvals, consents or waivers shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or any attempted sale, assignment, transfer, conveyance or delivery, thereof. For a period of 18 months after the Closing Date, the parties shall use their respective reasonable best efforts to cooperate with each other to obtain promptly such authorizations, approvals, consents or waivers and to give any notices required for the transfer of such Acquired Asset or Assumed Liability; provided, however, that no party shall be required to pay any consideration, make any material concession (other than customary filing and application fees typically paid by a seller or transferee) or commence or participate in any litigation. If such authorization, approval, consent or waiver is obtained, Parent shall cause the applicable Asset Seller to promptly assign, transfer, convey or deliver any such Acquired Asset or Assumed Liability to Buyer or its designated Affiliate at no additional cost. Pending the earlier of obtaining such authorization, approval, consent or waiver or the expiration of such 18-month period, the parties shall use reasonable best efforts to cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer all economic benefits and burdens ("Back-to-Back Arrangements") of any such Acquired Asset or Assumed Liability. During such time period, Parent and its applicable Affiliates shall comply with all applicable covenants and obligations with respect to such Acquired Asset or Assumed Liability, including the payment of any costs or expenses in connection therewith, which shall be performed by Parent or its applicable Affiliate for Buyer's account and Buyer shall promptly (but in no event later than 30 days following receipt of an invoice from Parent) reimburse Parent for any such out-of-pocket costs, expenses or payments made by Parent or its applicable Affiliate in respect of such Acquired Asset or Assumed Liability.

(ii) Prior to the Closing, Parent shall use its reasonable best efforts to cause the Ball Ground Landlord to (A) enter into a new lease agreement with Buyer (or a Buyer Designee), which new lease agreement shall be on substantially similar terms to the Original Ball Ground Lease (other than with respect to rent and the description of the premises) (the "New Ball Ground Lease"); provided, however, that (x) the premises to be subject to the New Ball Ground Lease would be the Ball Ground Buyer Premises and (y) the rent payable under the New Ball Ground Lease would be equal to the per square foot rental rate payable under the Ball Ground Lease multiplied by the rentable square footage of the Ball Ground Lease Buyer Premises, and (B) amend the Original Ball Ground Lease to remove the Ball Ground Buyer Premises from the premises covered thereby. Buyer shall reasonably cooperate in connection with such efforts, including by providing customary tenant information to the Ball Ground Landlord reasonably promptly upon Parent's written request.

Section 2.3 Local Agreements.

(a) Execution and Delivery. The parties hereto acknowledge and agree that the implementation of the transactions contemplated by Sections 2.1 and 2.2 may need to be effected at the Closing pursuant to certain short-form assignment and assumption, sale or other similar short-form transfer agreements, including, as necessary, notices of transfer, notarial deeds, powers of attorney and any other ancillary agreement or document reasonably requested by Buyer (provided that the parties agree that such assignment agreement will be required for the part of the Business sold by Chart Germany), in all cases subject to and conforming with the requirements of applicable local Requirements of Law (on a country-by-country basis), the Organizational Documents of the Acquired Company and the terms and conditions of this Agreement (collectively, the "Local Agreements"). The parties hereto shall negotiate in good faith the provisions of the Local Agreements, which shall be in a form mutually agreed upon by the parties hereto prior to the Closing, under the fundamental principle that the operative provisions governing the transactions contemplated by Sections 2.1 and 2.2 shall be contained in this Agreement to the maximum extent practicable so as to avoid confusion regarding the terms of such transactions. Unless otherwise required by applicable local Requirements of Law (on a country-by-country basis), the Local Agreements shall not contain any representations, warranties, covenants, indemnities or conditions. Each Local Agreement with respect to each applicable jurisdiction shall be in substantively the same form except, as the parties hereto shall mutually agree, for (i) the deletion of provisions which are inapplicable to the Business (or portion thereof) in such jurisdiction, (ii) such changes as may be necessary to satisfy the requirements of applicable local Requirements of Law or applicable Organizational Documents of any relevant Persons and (iii) such changes regarding employees and employee benefit matters in order to adapt such Local Agreement to the particular circumstances of the Business and jurisdiction. The parties will cooperate to prepare the Local Agreements as soon as reasonably practicable following the date hereof and will execute and deliver or cause their respective Affiliates to execute and deliver such Local Agreements at the Closing upon the terms and subject to the conditions of this Agreement.

(b) Claims Under Local Agreements. For the avoidance of doubt, each applicable Local Agreement will be entered into solely for the purpose of implementing (in the relevant jurisdictions) the sale, purchase and delivery of the Purchased Interests and the Acquired Assets, and the assignment and assumption of the Assumed Liabilities, as provided under the provisions of this Agreement. None of Buyer, Parent or any other party to a Local Agreement (including Sellers) shall be permitted to bring any claim against the other parties to such Local Agreement in respect of, under or based upon the Local Agreements; provided, that the foregoing shall not limit any rights or remedies of Buyer and Parent contained in this Agreement.

Section 2.4 Purchase Price.

(a) Upon the terms and subject to the conditions set forth in this Agreement, in consideration for the Purchased Interests and the Acquired Assets, Buyer shall (or shall cause one or more of its Affiliates as Buyer may designate pursuant to Section 2.2(d) to) (x) assume the Assumed Liabilities as provided in Section 2.2(b) and (y) pay to Sellers cash by wire transfer to one or more bank accounts designated in writing by Parent at least five (5) Business Days prior to the Closing Date in an amount equal to (the "Purchase Price"):

(i) the Base Purchase Price;

(ii) plus the Closing Date Working Capital Adjustment Amount (if the Closing Date Working Capital Adjustment Amount is a positive number);

(iii) minus the absolute value of the Closing Date Working Capital Adjustment Amount (if the Closing Date Working Capital Adjustment Amount is a negative number);

(iv) minus an amount equal to the amount necessary to discharge in full the Indebtedness of the Acquired Company as of immediately prior to the Closing (the "Closing Date Debt");

(v) minus an amount equal to the Transaction Expenses of the Acquired Company, to the extent not paid prior to the Closing (the "Closing Date Transaction Expenses"); and

(vi) plus an amount equal to the Cash and Cash Equivalents of the Acquired Company as of the close of business on the Business Day immediately preceding the Closing Date (the "Closing Date Cash");

provided, however, that the Australia Allocation portion of the Purchase Price shall be paid to Chart Australia, the US Allocation portion of the Purchase Price shall be paid to Chart US, the China Allocation portion of the Purchase Price shall be paid to the Equity Seller, the France Allocation portion of the Purchase Price shall be paid to Chart France, and the Germany Allocation portion of the Purchase Price shall be paid to Chart Germany, in each case as adjusted pursuant to the foregoing Sections 2.4(a)(ii) through (vi) as each such item relates to the Purchased Interests or Acquired Assets to be sold by such Seller, respectively (except for any such adjustment pursuant to the foregoing Sections 2.4(a)(ii) and (iii), which shall adjust all of such allocations pro rata in proportion to what each bears to the Purchase Price).

(b) Not less than four (4) Business Days prior to the Closing Date, Parent shall deliver to Buyer a certificate setting forth (i) the best and good faith estimate by Parent of (A) the Closing Date Working Capital (the "Estimated Closing Date Working Capital"), (B) the Closing Date Cash (the "Estimated Closing Date Cash"), (C) the Closing Date Debt (the "Estimated Closing Date Debt") and (D) the Closing Date Transaction Expenses (the "Estimated Closing Date Transaction Expenses"), and (ii) based on such estimates, a calculation of the Estimated Purchase Price, all in reasonable detail prepared in accordance with the Accounting Principles.

(c) Unless otherwise stated, all payments contemplated by this Agreement (including the Purchase Price), the Buyer Ancillary Agreements or the Parent Ancillary Agreements shall be made in U.S. Dollars. To the extent any component of the Purchase Price or any such other payment is based on or is determined by a currency other than U.S. Dollars, the applicable U.S. Dollar amount shall be converted from the applicable foreign currency equivalent determined on the basis of the Fixing Rate as of the date of the relevant payment; provided, however, that, for the avoidance of doubt, in the case of any component of the Purchase Price, the applicable U.S. Dollar amount shall be converted from the applicable foreign currency equivalent determined on the basis of the Fixing Rate as of the Closing Date.

Section 2.5 Purchase Price Adjustments.

(a) As promptly as practicable (but not later than ninety (90) days) following the Closing Date, Buyer shall deliver to Parent a certificate setting forth in reasonable detail (A) Buyer's calculation of (1) Closing Date Working Capital (the "Preliminary Working Capital Determination"), (2) Closing Date Cash (the "Preliminary Cash Determination"), (3) Closing Date Debt (the "Preliminary Debt Determination") and (4) Closing Date Transaction Expenses (the "Preliminary Transaction Expenses Determination"), and (B) based on such calculations, a calculation of the Purchase Price (the "Preliminary Purchase Price Determination" and, together with the Preliminary Working Capital Determination, the Preliminary Cash Determination, the Preliminary Debt Determination and the Preliminary Transaction Expenses Determination, the "Preliminary Closing Statement"), all in accordance with the Accounting Principles; provided, however, that until such time as the calculation of the amounts shown on the Closing Date Working Capital, Closing Date Cash, Closing Date Debt, Closing Date Transaction Expenses and Purchase Price determinations are final and binding on the parties pursuant to this Section 2.5, Buyer and its accountants shall, upon Parent's reasonable request, make themselves available to discuss with Parent and its accountants during normal business hours at a mutually agreeable time the Preliminary Closing Statement and Parent and its accountants shall be provided copies of, and have access upon reasonable notice at all reasonable times during normal business hours to, subject to Parent's entrance into a customary confidentiality agreement with Buyer's accountants (if required thereby), the work papers and supporting records of Buyer and its accountants used in connection with the preparation of the Preliminary Closing Statement.

(b) Following receipt of the Preliminary Closing Statement, if Parent has any objections to such document as prepared by Buyer, Parent shall deliver written notice to Buyer of such dispute indicating each disputed item (including the specified dollar amount of each disputed item along with the calculation of such disputed amount) and the basis for the disagreement therewith within forty-five (45) days after the date of such receipt thereof. In the event that Parent does not notify Buyer of a dispute with respect to the Preliminary Closing Statement within such 45-day period, the Preliminary Working Capital Determination, Preliminary Cash Determination, Preliminary Debt Determination, Preliminary Transaction Expenses Determination and Preliminary Purchase Price Determination set forth therein shall be final and binding as the "Closing Date Working Capital," "Closing Date Cash," "Closing Date Debt," "Closing Date Transaction Expenses" and "Purchase Price," respectively, for purposes of this Agreement. In the event of notice of such dispute, Parent and Buyer shall negotiate in good faith to resolve such dispute. If Buyer and Parent, notwithstanding such good faith effort, fail to resolve such dispute within thirty (30) days after Parent provides written notice to Buyer of Parent's objections, then Buyer and Parent shall engage the Auditors to conduct a review of Parent's objections to the Preliminary Working Capital Determination, Preliminary Cash Determination, Preliminary Debt Determination, Preliminary Transaction Expenses Determination and/or Preliminary Purchase Price Determination, as the case may be, as promptly as reasonably practicable (such review to be completed not later than thirty (30) days after the Auditors are requested to conduct such review) and, upon completion of such review, to deliver written notice to Parent and Buyer setting forth the Auditors' resolution of such objections and the resulting adjustments shall be deemed finally determined for purposes of this Section 2.5. The Auditors' role in completing such review shall be limited to resolving such objections and determining the correct calculations to be used with respect to only the disputed portions of the Preliminary Closing Statement. In resolving such objections, the Auditors shall apply the provisions of this Agreement concerning determination of the amounts set forth in the Preliminary Closing Statement and the decision of the Auditors shall be solely based on (i) whether such item objected to was prepared in accordance with the guidelines set forth in this Agreement concerning determination of the amounts set forth therein or (ii) whether the item objected to contains a mathematical or clerical error. The parties hereto shall not permit the Auditors to conduct any ex-parte communications with the parties, nor shall the Auditors take into consideration any settlement offers provided or exchanged by the parties. The Preliminary Working Capital Determination, Preliminary Cash Determination, Preliminary Debt Determination, Preliminary Transaction Expenses Determination and Preliminary Purchase Price Determination as agreed by Buyer and Parent or as determined by the Auditors, as the case may be, shall be final and binding as the "Closing Date Working Capital," "Closing Date Cash," "Closing Date Debt," "Closing Date Transaction Expenses," and "Purchase Price," respectively, for purposes of this Agreement.

(c) The parties hereto shall make available to the Auditors (if applicable), such books, records and other information (including work papers) that the Auditors may reasonably request in order to review the Preliminary Closing Statement. The fees and expenses of the Auditors hereunder shall be paid by Buyer, on the one hand, and Parent, on the other hand, based on the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by or on behalf of such party.

Section 2.6 **Purchase Price Adjustment Payment**. Promptly (but not later than five (5) Business Days) after the final determination of the Closing Date Working Capital, Closing Date Cash, Closing Date Debt, Closing Date Transaction Expenses and Purchase Price pursuant to Section 2.5, the parties shall take the following actions, as applicable:

(a) if the Purchase Price as finally determined pursuant to Section 2.5 exceeds the Estimated Purchase Price, then Buyer shall pay to Sellers by wire transfer of immediately available funds a dollar amount equal to the amount of such excess to the bank account or accounts specified by Parent in writing; and

(b) if the Estimated Purchase Price exceeds the Purchase Price as finally determined pursuant to Section 2.5, then Parent shall cause the Sellers to pay to Buyer by wire transfer of immediately available funds a dollar amount equal to the amount of such excess to the bank account or accounts specified by Buyer in writing;

provided, however, that each party hereto, as applicable, shall cause any such payments required to be made to or by Sellers pursuant to this Section 2.6 to be made to or by (or on behalf of) Chart Australia, Chart US, the Equity Seller, Chart France and Chart Germany in the relative proportions that such amounts actually relate to the Australia Allocation, the US Allocation, the China Allocation, the France Allocation and the Germany Allocation, respectively (except for any such payments in respect of Sections 2.4(a)(ii) and (iii), which shall adjust all of such allocations pro rata in proportion to what each bears to the Base Purchase Price).

Section 2.7 **Post-Closing Filings in the PRC and Relevant Covenants.**

(a) With respect to the Purchased Interests and the Acquired Company:

(i) Parent shall cause the Equity Seller to make a filing to the SAMR to register the Buyer Nominees as the Acquired Company's new director, supervisor, legal representative and general manager as soon as practicable after the Closing Date (provided that the executed original copies (as applicable) of the Buyer's Closing deliverables for such filing listed in Schedule 3.3(i) have been made available to the Acquired Company), and shall provide Buyer with a scanned copy of the filing notice issued by the SAMR evidencing the completion of such filing once such notice is obtained; and

(ii) Buyer shall cause the China Designee or the Acquired Company (as applicable) to make the following filings as soon as practicable after the Closing Date and provide Parent with a scanned copy of each of the filing notices and other documentation issued by the relevant authorities evidencing the completion of each relevant filing once such a documentation is obtained:

(A) the filing to the SAMR to register the China Designee as the Acquired Company's new sole shareholder; and

(B) the filings to SAFE, the competent PRC Tax Authority and the customs office to update a Buyer Nominee (as applicable) as the Acquired Company's new legal representative and register the China Designee as the Acquired Company's new sole shareholder (as applicable).

(b) From the Closing until such time as the filings in Section 2.7 (a) have been made and approval by the relevant authorities has been received in connection therewith, each of Buyer and its Affiliates, on the one hand, and Parent and the Equity Seller, on the other hand, shall provide or cause to be provided to the other parties all reasonable best efforts as are reasonably requested in connection therewith.

(c) With respect to the period from and after the Closing until the Completion Date for the SAMR Registration, Buyer shall indemnify and hold harmless each Parent Group Member from and against any Losses incurred by any Parent Group Member in connection with, arising out of or resulting from any claims made by any third party against any Parent Group Member as the Acquired Company's sole shareholder on the SAMR's record (in each case subject to Article XI).

ARTICLE III

CLOSING

Section 3.1 **Closing Date**. The Closing shall be held at the offices of Winston & Strawn LLP, 35 West Wacker Street, Chicago, Illinois 60601, at 10:00 a.m. Eastern time on the second (2nd) Business Day following the date on which each of the conditions set forth in Article IX is satisfied or waived by the party entitled to waive such condition (except for any conditions that by their nature can only be satisfied at the Closing, but subject to the satisfaction of such conditions or waiver by the party entitled to waive such conditions), or at such other date, time and place (including remotely via the exchange of executed documents and other deliverables by PDF) as shall be agreed upon by Buyer and Parent; provided, however, Buyer shall not be obligated to effect the Closing prior to the third Business Day following the final day of the Marketing Period or such earlier date as Buyer shall request on two (2) Business Days' prior written notice to Parent (but subject in each case to the satisfaction or waiver of all of the conditions set forth in Article IX (except for any conditions that by their nature can only be satisfied at the Closing, but subject to the satisfaction of such conditions or waiver by the party entitled to waive such conditions)). The date on which the Closing actually occurs is referred to herein as the "Closing Date."

Section 3.2 **Payments on the Closing Date**. Subject to fulfillment or waiver (where permissible) of the conditions set forth in Article IX, at the Closing:

(a) Buyer shall pay to Sellers in accordance with Section 2.4(b) the Estimated Purchase Price, by wire transfer of immediately available funds to the bank account or accounts specified by Parent in writing at least two (2) Business Days prior to the Closing Date;

(b) Buyer shall (on behalf of the Acquired Company) repay in full the Closing Date Debt, to the extent set forth in any payoff letter(s) delivered by Parent pursuant to Section 3.4(b), by wire transfer of immediately available funds to the bank account or accounts specified by the holders of such Indebtedness in writing at least two (2) Business Days prior to the Closing Date; and

(c) Buyer shall pay, by wire transfer of immediately available funds to the bank account or accounts specified by Parent in writing at least two (2) Business Days prior to the Closing Date, an amount sufficient to pay in full each Closing Date Transaction Expense (or, at Parent's discretion, Buyer shall pay to the Acquired Company such funds to pay such amounts).

Section 3.3 Buyer's Closing Deliveries. Subject to fulfillment or waiver (where permissible) of the conditions set forth in Article IX, at the Closing, Buyer shall deliver to Parent all of the following:

(a) such assumption instruments, Local Agreements, endorsements, consents, and other good and sufficient instruments of assumption as shall be effective to vest in Buyer, or Buyer's Designees, if any, respectively, all right, title and interest in and to the Purchased Interests and the Acquired Assets, in each case as provided for pursuant to this Agreement or as otherwise agreed by the parties;

(b) a duly executed counterpart of Buyer (or a Buyer Designee) to the Transition Services Agreement;

(c) a duly executed counterpart of Buyer (or a Buyer Designee) to the Bill of Sale;

(d) a duly executed counterpart of Buyer (or a Buyer Designee) to each of the IP Assignment Agreements;

(e) the certificate contemplated by Section 9.2(c), duly executed by an authorized officer of Buyer;

(f) any documents reasonably required to facilitate the transfer of the Owned Real Property;

(g) a duly executed counterpart of Parent or its applicable Affiliate to the REA;

(h) a duly executed counterpart of Chart US or its applicable Affiliate of the Sublicense Agreement; and

(i) the documents for the SAMR Filings listed in Schedule 3.3(i).

Section 3.4 Parent's Closing Deliveries. Subject to fulfillment or waiver (where permissible) of the conditions set forth in Article IX, at the Closing, Parent shall deliver to Buyer all of the following:

(a) the written resignations, in form and substance reasonably satisfactory to Buyer, of each of the officers, supervisors, legal representatives, and directors of the Acquired Company, except as requested otherwise by Buyer in writing not less than fifteen (15) Business Days prior to the Closing Date;

(b) a pay-off letter from each Person or Persons to whom any amounts of Closing Date Debt are owed and shall be paid at the Closing;

(c) a properly executed certificate, in form and substance satisfactory to Buyer, of Chart US's non-foreign status prepared in accordance with Treasury Regulations Section 1.1445-2(b);

(d) a duly executed counterpart of Parent to the Transition Services Agreement;

(e) a duly executed counterpart of Chart US to the Bill of Sale;

(f) a duly executed counterpart of each applicable Seller to each of the IP Assignment Agreements;

(g) such stock transfer instruments, Local Agreements, deeds, bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as shall be effective to vest in Buyer all right, title and interest in and to the Purchased Interests and the Acquired Assets, in each case as provided for pursuant to this Agreement or as otherwise agreed by the parties;

(h) the certificate contemplated by Section 9.3(c), duly executed by Parent;

(i) with respect to each parcel of Owned Real Property located in the United States:

(i) an original special warranty deed (or local equivalent) executed, notarized and in recordable form conveying fee simple title to such Owned Real Property to Buyer (the "Deed");

(ii) a certificate of real estate value and any Transfer Tax forms reasonably required in connection with the recording of the Deed;

(iii) an irrevocable commitment from the Title Company (subject to Buyer's payment of the associated fee or premium and Buyer's delivery to the Title Company of a signed and sealed survey) to issue to Buyer a new extended ALTA owner's title policy (which may be in the form of a mark-up of the title commitment) with respect to each of the parcels of the Owned Real Property located in New Prague, Minnesota, insuring fee simple title thereto vested in Buyer (or a Buyer Designee), free and clear of Encumbrances except for the Permitted Encumbrances, in an insured amount reasonably acceptable to Buyer (the "Title Policy");

(j) such other documents and instruments as may be reasonably necessary to effect or evidence the transactions contemplated hereby (including the issuance of the Title Policy and the conveyance of the Owned Real Property);

(k) a duly executed counterpart of Buyer or the applicable Buyer Designee of the REA;

(l) the shareholders' register and investment certificate of the Acquired Company recognizing that the China Designee is the Acquired Company's sole and beneficial shareholder as of the Closing Date, each affixed with the Acquired Company's company chop;

(m) a duly executed counterpart of Buyer or the applicable Buyer Designee of the Sublicense Agreement;

(n) the documents for the SAMR Filings listed in Schedule 3.4(n); and

(o) evidence reasonably satisfactory to Buyer of Parent's receipt of all consents, notices, waivers, amendments and approvals described on Schedule 3.4(o).

Section 3.5 **Withholding**. Each Buyer Group Member shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement, including Purchase Price, such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code or any Requirements of Law. Prior to making any such deduction or withholding, Buyer shall give Parent reasonable advance notice (and in any event not less than five (5) Business Days) of its intention to make such deduction or withholding and the opportunity to provide the necessary Tax forms or other information to avoid or reduce such withholding. To the extent that amounts are withheld by any Buyer Group Member, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES CONCERNING PARENT, SELLERS AND THE PURCHASED INTERESTS

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Parent represents and warrants to Buyer, as of the date hereof and the Closing Date (or, with respect to any representations and warranties made as of any particular date, as of such date), as follows:

Section 4.1 **Organization, Power and Authority**. Parent and each Seller has been duly formed and is validly existing under the laws of the jurisdiction of its organization. Parent and each Seller is duly qualified or licensed to transact business and is in good standing (or its local equivalent, if any) in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Parent and each Seller has the requisite corporate or other power and authority to own or lease and operate its assets as and where currently owned, operated and leased and to carry on the Business in all material respects in the manner that it was conducted immediately prior to the date of this Agreement. Parent and each Seller have the requisite power and authority to execute, deliver and perform its obligations under this Agreement and each of the Parent Ancillary Agreements to which it is a party. The execution, delivery and performance of this Agreement and the Parent Ancillary Agreements by Parent and each Seller (as applicable) and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by Parent's board of directors and do not require any further authorization, consent or other proceeding of Parent, any Seller or any of their respective stockholders or equityholders. This Agreement has been duly and validly authorized, executed and delivered by Parent and represents (assuming the valid authorization, execution and delivery of this Agreement by the other parties hereto) the legal, valid and binding obligation of Parent, enforceable against Parent in accordance with its terms, and each of the Parent Ancillary Agreements to which it is a party has been duly authorized by such Seller and Parent and, upon execution and delivery by such Seller and Parent, will (assuming the valid authorization, execution and delivery of this Agreement by the other parties hereto) represent the legal, valid and binding obligation of such Seller and Parent, enforceable against such Seller and Parent in accordance with its terms, in each case subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights and subject to general equity principles.

Section 4.2 **Title to Purchased Interests and Acquired Assets**. The Equity Seller is the sole record and beneficial owner of all of the Purchased Interests, free and clear of all Encumbrances (other than any Encumbrances under applicable securities laws). The Equity Seller has the power and authority to sell, transfer, assign and deliver the Purchased Interests to Buyer as provided in this Agreement, and such delivery will convey to Buyer good and marketable title to such Purchased Interests, free and clear of any and all Encumbrances (other than any Encumbrances under applicable securities laws). Except for this Agreement, there are no agreements, arrangements, warrants, options, puts, rights or other commitments, plans or understandings of any character assigned or granted by Equity Seller or to which Equity Seller is a party relating to the issuance, sale, purchase, redemption, conversion, exchange, registration, voting or transfer of any of the Purchased Interests. Each Asset Seller has good and valid title to the personal property and other assets which it owns that are included in the Acquired Assets, free and clear of Encumbrances (other than Permitted Encumbrances).

Section 4.3 **No Brokers**. None of Parent, any Seller nor any other Person acting on Parent's or any Seller's behalf has incurred any Liability to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement or the Parent Ancillary Agreements.

Section 4.4 **No Other Representations**. Except for the representations and warranties contained in this Agreement, the Parent Ancillary Agreements and any certificates or documents delivered hereto, neither Parent nor any other Person acting on behalf of Parent makes any representation or warranty, express or implied, regarding Parent, Sellers or the Purchased Interests.

ARTICLE V

REPRESENTATIONS AND WARRANTIES CONCERNING THE BUSINESS, THE ACQUIRED COMPANY AND THE TRANSACTION

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Parent represents and warrants to Buyer, as of the date hereof and the Closing Date (or, with respect to any representations and warranties made as of any particular date, as of such date), as follows:

Section 5.1 Organization; Capital Structure of the Acquired Company; Power and Authority.

(a) The Acquired Company has been duly formed and is validly existing under the laws of the jurisdiction of its organization and is not and has not, during the course of Parent's direct or indirect ownership of the Acquired Company, been insolvent or subject to any bankruptcy or insolvency proceedings under the applicable Requirements of Law. To the extent applicable, the Acquired Company is duly qualified or licensed to transact business and is in good standing (or its local equivalent, if any) in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Acquired Company has the requisite corporate or other power and authority to own or lease and operate its assets as and where currently owned, operated and leased and to carry on the Business in all material respects in the manner that it was conducted immediately prior to the date of this Agreement.

(b) Schedule 5.1(b) sets forth the authorized capital stock or other equity interests of the Acquired Company and the number of shares or the ownership percentages of each class of capital stock or other equity interests of the Acquired Company that are issued and outstanding and the owner of such shares or other equity interests. Except for the Purchased Interests, there are no shares of capital stock or other equity securities of the Acquired Company issued, reserved for issuance or outstanding. All of such capital stock or other equity interests set forth on Schedule 5.1(b) (i) are duly authorized, validly issued, and as applicable, fully paid and nonassessable, (ii) are not subject to, nor have they been issued in violation of, any Encumbrance, purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of an applicable Requirement of Law, the Organizational Documents of the Acquired Company or any Contract to which the Equity Seller or the Acquired Company is a party or otherwise bound and (iii) have been offered, sold and issued in compliance with applicable Requirements of Law.

(c) Except for this Agreement, there are no agreements, arrangements, options, warrants, puts, calls, subscriptions, rights, claims or commitments of any character relating to the issuance, sale, purchase, redemption, conversion, exchange, registration, voting or transfer of any capital stock or other outstanding equity interests of the Acquired Company or outstanding securities of the Acquired Company that are convertible into or exchangeable for capital stock of, or other equity interests in, the Acquired Company. There are no outstanding or authorized compensatory equity or equity-linked interests with respect to the capital stock or other equity interests of the Acquired Company, including any options, appreciation rights, restricted stock, stock units, profits interests, restricted units, phantom stock, profit participation or similar awards or rights.

Section 5.2 **Subsidiaries**. The Acquired Company does not have any Subsidiaries. The Acquired Company does not own nor does the Acquired Company have the right to acquire, directly or indirectly, any outstanding capital stock of, or other equity interests in, any other Person.

Section 5.3 **Conflicts**. Neither the execution and delivery by Parent of this Agreement or by Parent or any Seller of any of the Parent Ancillary Agreements, nor the consummation by Parent and Sellers of any of the transactions contemplated hereby or thereby, nor the compliance by Parent and Sellers with the terms, conditions and provisions hereof or thereof will:

(a) subject to obtaining the receipt of all necessary consents and approvals and the filing of all necessary documents set forth in Section 5.3(b), result in a violation or breach of the terms, conditions or provisions of, or constitute a default, an event of default or an event that, after notice or lapse of time or both, would result in the creation of rights of acceleration, termination or cancellation or a loss of rights under, or result in the creation or imposition of any Encumbrance upon, (i) the Organizational Documents of the Acquired Company or any Seller, (ii) any Material Contract, (iii) any of the Purchased Interests or any of the assets of the Acquired Company or the Acquired Assets, (iv) any Order to which the Business is a party or by which the Business is bound or (v) any Requirements of Law affecting the Business, other than, in the case of clauses (ii), (iii), (iv) and (v) of the foregoing, any such violations, breaches, defaults, rights, loss of rights or Encumbrances that would not, individually or in the aggregate, reasonably be expected to affect the Business in any material respect or prevent or delay the consummation of any of the transactions contemplated hereby; or

(b) except as set forth in Schedule 5.3(b), require the approval, consent, authorization or act of, the notice to or the making by Parent, the Acquired Company or Sellers of any declaration, filing or registration with, any Person, except (i) in connection with or in compliance with the provisions of the HSR Act, (ii) such filings as may be required in connection with the Taxes described in Section 8.1 and (iii) such approvals, consents, authorizations, declarations, filings or registrations the failure of which to be obtained or made would not, individually or in the aggregate, reasonably be expected to affect the Business in any material respect or prevent or delay the consummation of any of the transactions contemplated hereby.

Section 5.4 **Financial Statements**.

(a) Schedule 5.4 contains complete copies of (i) the audited consolidated balance sheet of the Business as of December 31, 2019 and December 31, 2018 and the unaudited consolidated balance sheet of the Business as of March 31, 2020 and June 30, 2020 (June 30, 2020 being the "Balance Sheet Date"), and (ii) the audited consolidated statement of profit and loss and cash flows of the Business for the year ended December 31, 2019 and December 31, 2018 and the unaudited consolidated statement of profit and loss and cash flows of the Business for the three months ended March 31, 2020 and six months ended June 30, 2020 (collectively, the "Financial Statements"). Except as set forth therein or as described on Schedule 5.4, the Financial Statements are based on and consistent with the books and records of Parent, and present fairly in all material respects the consolidated financial position, results of operations and cash flows of the Business, and have been prepared in accordance with GAAP on a consistent basis throughout the periods involved, as of their respective dates and for the respective periods covered thereby.

(b) All transactions related to the Business are and have been properly and accurately recorded in reasonable detail in its books and records, and each document upon which such entries in its books and records are based is complete and accurate in all material respects. None of Parent, the Acquired Company, Sellers nor any Person on behalf of or for the benefit of Parent, the Acquired Company or Sellers have created or used any off-books cash funds, bank accounts, or other property in connection with the Business. Parent, the Acquired Company and Sellers have not made any false or fictitious entries in its books or records related to the Business, and Parent, the Acquired Company and Sellers maintain a system of internal accounting controls adequate to ensure that Parent, the Acquired Company and Sellers maintain no off-the-books accounts in relation to the Business and that its assets are used only in accordance with management directives.

Section 5.5 **Operations Since Balance Sheet Date**. From the Balance Sheet Date to the date hereof, there has not been a Material Adverse Effect and, except as set forth in Schedule 5.5, from the Balance Sheet Date to the date hereof, the Business has been conducted in all material respects in the ordinary course of business consistent with past practice. Without limiting the generality of the foregoing, from the Balance Sheet Date to the date hereof, except as set forth in Schedule 5.5, the Business has not taken any action, which, if taken after the date hereof and prior to the Closing, would require the consent of Buyer pursuant to Section 7.4(b).

Section 5.6 **Taxes**. Except as set forth in Schedule 5.6:

(a) All Tax Returns required to have been filed by or on behalf of the Acquired Company and, with respect to the Acquired Assets or the Business, the Asset Sellers have been timely filed (taking into account extensions properly obtained) with the appropriate Tax Authority. All such Tax Returns are true, complete and accurate in all material respects. No claim has ever been made by a Tax Authority in a jurisdiction where the Acquired Company or, with respect to the Acquired Assets or the Business, any Asset Seller does not file a Tax Return that such entity is or may be subject to taxation by that jurisdiction in respect of Taxes that would be covered by or the subject of such Tax Return.

(b) All Taxes due and owing by the Acquired Company and, with respect to the Acquired Assets or the Business, Parent and the Asset Sellers (whether or not shown on any Tax Returns) have been timely paid.

(c) Neither the Acquired Company nor, with respect to the Acquired Assets or the Business, any Asset Seller is the beneficiary of any extension of time within which to file any Tax Return other than ordinary course extensions of time to file Tax Returns which have since been filed.

(d) There is no pending or threatened audit, investigation, dispute, notice of deficiency, claim or other action with respect to Taxes of the Acquired Company or, with respect to the Acquired Assets or the Business, the Asset Sellers. Neither the Acquired Company nor, with respect to the Acquired Assets or the Business, any Asset Seller has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) The Acquired Company has never been a member of an affiliated group filing a consolidated federal income Tax Return or any similar group for U.S. federal, state, local or foreign Tax purposes. The Acquired Company is not liable for the Taxes of any other Person (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Requirements of Law), (ii) as a transferee or successor, (iii) by Contract or (iv) otherwise.

(f) Neither the Acquired Company nor, with respect to the Acquired Assets or the Business, any Asset Seller is a party to or bound by any Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement or similar Contract, other than any such agreement entered into in the ordinary course of business that is not primarily related to Taxes.

(g) The Acquired Company is not a partner for Tax purposes with respect to any joint venture, partnership, or other arrangement or Contract which is treated as a partnership for Tax purposes. The Acquired Company is disregarded as an entity separate from its owner for U.S. federal income tax purposes. No entity classification election pursuant to Treasury Regulations Section 301.7701-3 has been filed with respect to the Acquired Company.

(h) The Acquired Company has not been a party to a transaction that is or is substantially similar to a "listed transaction," as such term is defined in Treasury Regulations Section 1.6011-4(b)(2), or any other transaction requiring disclosure under analogous provisions of state, local or foreign Tax Requirements of Law.

(i) The Acquired Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any installment sale or other transaction on or prior to the Closing Date, any accounting method change or agreement with any Tax Authority filed or made on or prior to the Closing Date, any prepaid amount received on or prior to the Closing or any intercompany transaction or excess loss account described in Section 1502 of the Code (or any corresponding provision of state, local or foreign Tax law).

(j) During the last three (3) years, the Acquired Company has not been party to any transaction treated by the parties thereto as one to which Section 355 of the Code applied;

(k) There are no Encumbrances for Taxes upon the assets of the Acquired Company or upon the Acquired Assets, nor have any such Encumbrances been proposed or anticipated, except for Permitted Encumbrances.

(l) All Taxes which the Acquired Company is required by Requirements of Law to withhold or to collect for payment, or which Parent or Sellers are or have been required by Requirements of Law to withhold with respect to the Business, have been duly withheld and collected and have been paid to the appropriate Tax Authority or set aside or reserved on the books of the Acquired Company, Parent or Sellers.

(m) No compensation has been or would reasonably be expected to be includable in the gross income of any current or former Service Provider as a result of the operation of Section 409A of the Code.

(n) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, either alone or in combination with another event (whether contingent or otherwise) will result in any "parachute payment" under Section 280G of the Code (or any corresponding provision of state, local, or foreign Tax law).

(o) There is no contract, agreement, plan or arrangement which requires the Acquired Company to pay a Tax gross-up or reimbursement payment to any Service Provider, including without limitation, with respect to any Tax-related payments under Section 409A of the Code or Section 280G of the Code.

Section 5.7 **Governmental Permits**. Except as set forth in Schedule 5.7, the Parent, Acquired Company or one of the Asset Sellers owns, holds or possesses all material licenses, franchises, permits, privileges, immunities, registrations, clearances, exemptions, approvals and other authorizations from a Governmental Body that are necessary to conduct the Business in all material respects as conducted immediately prior to the date of this Agreement and Closing (collectively, the "Governmental Permits"). Each of the Governmental Permits is valid, subsisting and in full force and effect. Except as set forth in Schedule 5.7, the operation of the Business as currently conducted is not, and during the past three (3) years has not been, in material violation of, nor is the Acquired Company or, with respect to the Business, the Parent or any Asset Seller, in default or material violation under, any Governmental Permit and, to the Knowledge of Sellers, no event has occurred which would constitute a default or violation of any material term, condition or provision of any Governmental Permit.

Section 5.8 **Real Property**.

(a) Schedule 5.8(a) sets forth a true and complete list of each parcel of real property (including the address) owned by the Acquired Company or, with respect to the Business, the Asset Sellers (collectively, the "Owned Real Property") and the record owner thereof. The Acquired Company or an Asset Seller, has good, marketable, indefeasible and valid fee simple title to all of the Owned Real Property, free and clear of all Encumbrances except for Permitted Encumbrances. Neither the Acquired Company nor any of the Asset Sellers has (i) leased or otherwise granted to any Person rights to use or occupy the Owned Real Property or any portion thereof, (ii) an option to acquire any real property or interest therein with respect to the Business. There are no purchase agreements, letters of intent, outstanding options, rights of first offer or rights of first refusal to purchase the Owned Real Property or any portion thereof or interest therein.

(b) The Owned Real Property identified in Schedule 5.8(a) and the Leased Real Property identified in Schedule 5.8(c) (collectively, the "Real Property") comprise all of the real property Related to the Business.

(c) Schedule 5.8(c) sets forth (i) a true, correct and complete list of all leasehold, subleasehold and licensed interests (including the address) of, the Acquired Company or, with respect to the Business, the Asset Sellers in all real property (the "Leased Real Property") and (ii) a true and complete list of all leases, subleases, licenses and other agreements for the use and occupancy by the Business of the Leased Real Property (together with all modifications, amendments, extensions, guaranties, assignments and supplements thereto, collectively, the "Lease Agreements"). Parent has made available to Buyer true and complete copies of all Lease Agreements. Each Lease Agreement is a legal, valid and binding obligation of the Acquired Company or an Asset Seller, as applicable, is in full force and effect and is enforceable against the Acquired Company or such Asset Seller, as applicable, and, to the Knowledge of Sellers, against the other parties thereto, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Requirements of Law of general application relating to or affecting creditors' rights and to general principles of equity. Except as set forth in Schedule 5.8(c), (i) the Acquired Company or the Asset Sellers, as applicable, have a valid leasehold estate in all Leased Real Property, free and clear of all Encumbrances (except for Permitted Encumbrances), (ii) the Lease Agreements have not been assigned, modified, amended, supplemented or altered, in writing or otherwise, (iii) the Acquired Company or the Asset Sellers, as applicable, have performed all material obligations required to be performed by them and are not in any material default under or in material breach of nor in receipt of any written notice of breach or termination under any Lease Agreement, and to the Knowledge of Sellers, as applicable, no event has occurred which with the passage of time or the giving of notice or both would result in a material default, breach or event of noncompliance by the Acquired Company or the Asset Sellers under any Lease Agreement, and (iv) to the Knowledge of Sellers, no other party to any Lease Agreement is in material breach of or material default under such Lease Agreement. None of the Acquired Company or the Asset Sellers, as applicable, has subleased or otherwise granted to any other party the right to use any of the Leased Real Property.

(d) To the Knowledge of Sellers, current local zoning ordinances, general plans and other applicable land use regulations and all private covenants, conditions and restrictions, if any, affecting any Real Property permit the use and operation of such Real Property for its current use.

(e) The Sellers have not received written notice of any pending or threatened proceedings for the rezoning (i.e., as opposed to the current zoning) of any Real Property or any portion thereof, or the taking of any other action by governmental authorities concerning such Real Property that would hinder or prevent the use of such Real Property for its current use.

(f) The Sellers have not received any written notice of any existing, pending, or proposed (i) public improvement in, about, or outside any Real Property that has or would result in the imposition of any Encumbrance (other than Permitted Encumbrances) against any part of such Real Property; (ii) special assessment imposed or to be imposed by any Governmental Body impacting or that would impact, respectively, any part of any Real Property; or (iii) condemnation or eminent domain proceedings or their local equivalent affecting any of the Real Property.

Section 5.9 Intellectual Property.

(a) Schedule 5.9(a) contains a list of all Copyrights, Patent Rights and Trademarks (i) owned by the Acquired Company or (ii) owned by the Asset Sellers or the Parent that are Related to the Business (the "Company Registered Intellectual Property"). None of the Asset Sellers, the Acquired Company or the Parent own, directly or indirectly, any Copyrights, Patent Rights or Trademarks which are necessary for the conduct of the Business as currently conducted, except for those listed on Schedule 5.9(a).

(b) Schedule 5.9(b) contains a list of all Software owned or used by the Asset Sellers or the Acquired Company that are Related to the Business, other than software that is generally commercially available and subject to "shrink-wrap" or "click-through" non-exclusive license agreements for aggregate fees of less than $200,000, including any software pre-installed in the ordinary course of business as a standard part of hardware purchased by the Asset Sellers or Acquired Company ("Off-the-Shelf Software").

(c) Except as disclosed in Schedule 5.9(c), (i) the Acquired Company, an Asset Seller or the Parent (A) owns the entire right, title and interest in and to the Registered Company Intellectual Property and all other material Intellectual Property owned or purported to be owned by (I) the Acquired Company, (II) the Asset Sellers or (III) the Parent and included in the Acquired Assets (collectively, the "Company Intellectual Property"), free and clear of all Encumbrances, except for Permitted Encumbrances; or (B) has a valid contractual right or license to use any Intellectual Property used by it in the conduct of the Business that is not owned or purported to be owned by such Person, and (ii) the Acquired Company, an Asset Seller or the Parent either (A) owns the entire right, title and interest in and to the Software listed in Schedule 5.9(b), free and clear of all Encumbrances, except for Permitted Encumbrances; or (B) has a valid contractual right or license to use any Software used by it in the conduct of the Business that is not owned or purported to be owned by such Person.

(d) Except as disclosed in Schedule 5.9(d): (i) all registrations for Company Registered Intellectual Property identified in Schedule 5.9(a) are valid and in force, and all applications to register Company Registered Intellectual Property so identified are pending and in good standing, all (to the Knowledge of Sellers) without challenge of any kind; and (ii) to the Knowledge of Sellers, no other Person is infringing on any of the Company Intellectual Property.

(e) Except as disclosed in Schedule 5.9(e), (i) no infringement, misappropriation or other violation by the Business of any Intellectual Property of any other Person has occurred or resulted in any way from the conduct of the Business in the past three (3) years; and (ii) no written notice of a claim of any infringement of any Intellectual Property of any other Person has been received by the Acquired Company, an Asset Seller or the Parent in respect of the conduct of the Business in the past three (3) years.

(f) Except as disclosed in Schedule 5.9(f), as of the date hereof, no Proceedings are pending or, to the Knowledge of Sellers, threatened against the Acquired Company or, with respect to the Business, the Asset Sellers or the Parent, which challenge the validity, enforceability or ownership of any Company Intellectual Property.

(g) The IT Assets operate in all material respects in accordance with their documentation and functional specifications and otherwise as required by the Asset Sellers and the Acquired Company and the operation of Business. There has been no failure with respect to any IT Assets that has had a material effect on the operations of the Business in the last three (3) years. To the Knowledge of Sellers, there have been no breaches, security incidents, misuse of or unauthorized access to any IT Assets in any material respect in the last three (3) years.

(h) The Asset Sellers or the Acquired Company owns or otherwise has sufficient rights (including any consents required by applicable Requirements of Law from individuals) to transfer all Personal Information being transferred to Buyer and for Buyer to have the same rights, in all material respects, in and to such Personal Information after the Closing. None of the Asset Sellers' or the Acquired Company's privacy policies or notices that govern the collection of any Personal Information have been misleading or deceptive. Neither the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby will result in, or give any other Person the right or option to cause or declare a violation of any applicable privacy policy of the Asset Sellers or the Acquired Company that govern the collection of any Personal Information with respect to the Business. The Asset Sellers' and the Acquired Company's Processing of all Personal Information have, for the previous three (3) years, complied in all material respects with all Data Protection Laws. None of the Asset Sellers or the Acquired Company has been the subject of an audit by any Governmental Body in relation to the Business' compliance with applicable Data Protection Laws in the two (2) years prior to the date of this Agreement. In the last three (3) years, none of the Asset Sellers or the Acquired Company has received any written notice, complaint or claim from any Person alleging non-compliance with Data Protection Laws (including any prohibition or restriction on the transfer of data to any jurisdiction) or claiming compensation for or an injunction in respect of non-compliance with Data Protection Laws. The Asset Sellers and the Acquired Company processing of all Personal Information have at all times complied in all material respects with all of the Asset Sellers or the Acquired Company policies, procedures and contractual obligations regarding Personal Information (including privacy policies), and the Asset Sellers and the Acquired Company have not received any written notice of any claims of, or been charged in writing by a Governmental Body with, the violation of any of the foregoing. To the Knowledge of Sellers, there have been no breaches, security incidents, misuse of or unauthorized access to or disclosure of any Personal Information related to the Business.

Section 5.10 Compliance with Laws; Anti-Corruption; Trade Controls; Litigation.

(a) Except as set forth in Schedule 5.10(a), (i) during the past three (3) years, the Acquired Company and, with respect to the Business, Parent and the Asset Sellers have complied and are in compliance, in each case in all material respects, with each Requirement of Law (including, for the avoidance of doubt, Health Care Laws) and Order that is applicable to their respective properties, assets (including, without limitation, the Real Property), operations, sales, manufacturing or business; and (ii) during the past three (3) years, the Acquired Company has not and, with respect to the Business, neither Parent nor any Asset Seller has, received any written notice from any Governmental Body indicating that it is or may be in material violation of any Requirements of Law.

(b) Without limiting the generality of Section 5.10(a), except as set forth in Schedule 5.10(b):

(i) The Acquired Company and, with respect to the Business, each of Parent and the Asset Sellers (including each of their respective officers, directors, employees and, to the Knowledge of Sellers, any Person who performs services including distributors, agents or other representatives, in each case, acting on behalf of the Acquired Company or such Asset Seller (with respect to the Business)) is, and during the past five (5) years has been, in compliance with the U.S. Foreign Corrupt Practices Act of 1977, as amended, and any other applicable Requirements of Law pertaining to trade and economic sanctions and export controls, including, without limitation, such Requirements of Law administered and enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, and the U.S. Department of Commerce, and to the extent applicable, the Requirements of Law of Governmental Bodies of other countries relating to the same subject matter as the U.S. statutes and regulations described above, including the German Foreign Trade and Payments Act, the German Foreign Trade Regulation and the EU Dual-Use Regulation (Regulation (EC) No 428/2009) ("Anti-Corruption Laws" and "Trade Controls Laws", respectively);

(ii) To the Knowledge of Sellers, neither the Acquired Company nor, with respect to the Business, Parent or any of the Asset Sellers have, in the past five (5) years, been the target or subject of any claims, Orders, complaints, charges, investigations, or Proceedings under Anti-Corruption Laws or Trade Controls Laws, and to the Knowledge of Sellers, there are no pending or threatened claims or investigations involving suspect or confirmed violations thereof;

(iii) Neither the Acquired Company nor, with respect to the Business, Parent or any of the Asset Sellers (nor any of their respective officers, directors, employees and, to the Knowledge of Sellers, any Person who performs services including distributors, agents or other representatives, in each case, acting on behalf of the Acquired Company or such Asset Seller (with respect to the Business)) is (1) located, organized, or resident in a country or territory that is the target of comprehensive sanctions by the U.S. government (currently, Cuba, Iran, North Korea, Syria, or the Crimea region of Ukraine (collectively, "Sanctioned Countries")); (2) the target of Trade Controls Laws, including being identified on a U.S. government restricted parties list, such as OFAC's Specially Designated Nationals ("SDN") and Blocked Persons List, the Department of State's Nonproliferation Sanctions List, or the Department of Commerce's Denied Persons List and Entity List, or is owned fifty percent (50%) or more, individually or in the aggregate, by one or more SDNs (collectively, a "Sanctioned Person"); or (3) engaged, directly or indirectly, in dealings or transactions in or with Sanctioned Countries or Sanctioned Persons in violation of Trade Controls Laws; and

(iv) Neither the Acquired Company nor, with respect to the Business, Parent or any of the Asset Sellers (nor any of their respective officers, directors, employees and, to the Knowledge of Sellers, any Person who performs services including distributors, agents or other representatives, in each case, acting on behalf of the Acquired Company or such Asset Seller (with respect to the Business)) has, during the past five (5) years: (A) directly or indirectly given, offered, promised, or authorized the giving of money or anything of value to any government official with the intent, in violation of Anti-Corruption Laws, to (1) influence such government official's act or decision, (2) induce action or inaction in violation of a lawful duty; (3) secure any improper business advantage or favor; or (4) induce such governmental official to influence an official act or decision to direct business to such Acquired Company or to gain any improper advantage or benefit for such Acquired Company, or (B) directly or indirectly, given, offered, promised, or authorized the giving of any payment or provision of anything of value where such activity would constitute a bribe, gratuity or kickback in violation of Anti-Corruption Laws.

(c) Except as set forth in Schedule 5.10(c):

(i) as of the date hereof, there are no Proceedings pending or, to the Knowledge of Sellers, threatened against the Acquired Company or, with respect to the Business, Parent or any Asset Seller;

(ii) as of the date hereof, there is no Proceeding pending or, to the Knowledge of Sellers, threatened that questions the legality of the transactions contemplated by this Agreement or any of the Parent Ancillary Agreements; and

(iii) the Business is not subject to any outstanding Order that prohibits or otherwise restricts the ability of Parent, the Acquired Company or any Seller to consummate fully the transactions contemplated by this Agreement or any of the Parent Ancillary Agreements.

Section 5.11 Contracts. Except as set forth in Schedule 5.11, as of the date of this Agreement, neither the Acquired Company nor, with respect to the Business, Parent or any Asset Seller, is a party to or bound by:

(a) any Contract for the purchase of services, supplies, raw materials, components or equipment which is reasonably expected to involve payment by the Business of more than $300,000;

(b) any Contract for the sale of any services or products which is reasonably expected to involve payment to the Business of more than $300,000;

(c) any loan agreements, promissory notes, indentures, letters of comfort, letters of credit, bonds or other instruments involving indebtedness for borrowed money in an amount in excess of $50,000 or any guaranties of any such indebtedness or otherwise placing an Encumbrance (other than a Permitted Encumbrance) on any of the Acquired Assets;

(d) any license of, or other Contract granting the Business the right to use, any Intellectual Property or Software received from or granted to third parties which is material to the conduct of the Business as currently conducted, excluding (i) Off-the-Shelf Software; (ii) software that is commercially available under non-exclusive license agreements for aggregate fees of less than $200,000; (iii) licenses for open source Software; (iv) licenses for Software or other Intellectual Property embedded in any equipment, fixtures, components, or finished products; (v) agreements with employees or contractors; (vi) nondisclosure agreements entered into in the ordinary course of business; (vii) licenses granted to contractors and other third parties in the ordinary course of business; and (viii) agreements entered into with customers in the ordinary course of business;

(e) any covenants not to sue, trademark co-existence agreements, or Contracts (other than Contracts with Service Providers entered into in the ordinary course of business consistent with past practice) for the invention, creation, development or modification of any Intellectual Property to the extent not set forth in Schedule 5.11(d);

(f) any employment or consulting Contract with any Service Provider (i) providing for payment of base salary or similar payments of an amount in excess of $150,000 per year, (ii) providing for the payment of compensation and/or benefits upon or in connection with the consummation of the transactions contemplated by this Agreement and/or (iii) providing for the payment of severance or termination pay or benefits (other than statutory severance or termination pay) upon a termination of the agreement or the applicable individual's employment or service;

(g) any Contract for capital expenditures involving payments of more than $250,000 individually, or $500,000 in the aggregate, after the date hereof;

(h) any partnership, joint venture, limited liability company or other similar Contract or arrangement involving (i) the sharing of profits, losses, costs or liabilities with any other Person, (ii) the sharing of equity interests or (iii) the payment of royalties or similar contingent payment obligations;

(i) any Contract with another Person which (i) limits or restricts the ability of the Business to enter into or engage in any market or line of business, (ii) establishes an exclusive sale or purchase obligation with respect to any product or service or (iii) establishes any geographical restrictions on the Business for sale or purchase obligations with respect to any product or service (except, in each case, for such agreements which shall not apply to the Business upon Closing);

(j) any Contract that contains "take or pay" provisions or minimum purchase provisions;

(k) any Contract for the sale of products or services, in each case, containing "most-favored nation" pricing terms or any "requirements" Contract;

(l) any Contract with a Material Customer or Material Supplier (other than purchase or sales orders of less than $300,000);

(m) any Lease Agreement;

(n) any Contract that relates to the acquisition or disposition of any business within the past three (3) years (whether by merger, purchase or sale of stock, purchase or sale of assets or otherwise); or

(o) any Contract with a Governmental Body.

Section 5.12 **Status of Contracts**. Except as set forth in Schedule 5.12, each of the Contracts set forth in Schedule 5.11 (collectively, the "Material Contracts") is a valid and binding obligation of one of the Acquired Company or an Asset Seller, as applicable, is in full force and effect and is enforceable against such Person, as applicable, and, to the Knowledge of Sellers, against the other parties thereto, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Requirements of Law of general application relating to or affecting creditors' rights and to general principles of equity. Neither the Acquired Company nor any of the Asset Sellers are in or, to the Knowledge of Sellers, alleged to be in, material breach or material default under any of the Material Contracts. Parent has made available to Buyer true, correct and complete copies of each Material Contract. Neither Parent, the Acquired Company nor any Asset Seller has provided or received any written notice of the termination, including any termination conditioned on the occurrence or failure to occur of any set of facts, circumstances or events, of any Material Contract. To the Knowledge of Sellers, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof.

Section 5.13 **Sufficiency of Assets**.

(a) On the Closing Date (assuming receipt of all consents, approvals and authorizations set forth in Schedule 5.3(b)), except as set forth on Schedule 5.13, the assets and Contracts of the Acquired Company and the Acquired Assets will, taking into account the Transition Services Agreement, constitute all of the rights, property and assets necessary to conduct the Business immediately following the Closing in all material respects as currently conducted and as conducted during the twelve (12) months prior to the Closing; provided, however, that nothing in this Section 5.13 shall be deemed to constitute a representation or warranty as to the adequacy of the amounts of Cash and Cash Equivalents or Working Capital (or the availability of the same). The Business has good and valid title to personal property and other assets reflected in the Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice. All such properties and assets are free and clear of Encumbrances other than Permitted Encumbrances.

(b) The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Acquired Company or included in the Acquired Assets (i) are structurally sound, (ii) are in good operating condition and repair (save for ordinary wear and tear) and (iii) are adequate for the uses to which they are being put, in each case of the foregoing clauses (i), (ii) and (iii), in all material respects.

(c) All inventory of the Business consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice in all material respects, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Acquired Company or an Asset Seller free and clear of all Encumbrances (except for Permitted Encumbrances), and no inventory is held on a consignment basis.

Section 5.14 **Employee Benefits**.

(a) Each Plan is listed in Schedule 5.14(a), and with respect to each such Plan, Parent has made available to Buyer prior to the date hereof a true and correct copy of either such Plan or a written summary of the material terms thereof and the most recent summary plan description, the three most recent annual reports (with schedules and attachments), the three most recently prepared actuarial reports and financial statements (if any), all material records, notices and filings concerning Governmental Body audits or investigations, and all non-routine, written communications and filings with any Governmental Body relating to such Plan.

(b) Schedule 5.14(b) contains a complete and accurate list of all Plans maintained, sponsored or contributed to by the Acquired Company or under which the Acquired Company has any liability to provide compensation or benefits to any Service Provider (or spouse, dependent or beneficiary thereof) (but excluding any Seller Plan) (the "Company Plans"). With respect to each Plan, (i) such Plan has been maintained and operated in all material respects in compliance with the terms of such Plan and the applicable Requirements of Law, including, without limitation, the Code and ERISA and any provisions under applicable Requirements of Laws in the PRC in relation to the mandatory social insurance funds and housing funds, and (ii) no litigation or claim is pending or, to the Knowledge of Sellers, threatened with respect to any such Plan or any assets or fiduciaries thereof (other than routine claims for benefits).

(c) Each Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is entitled to rely on an opinion letter for a prototype or volume submitter plan, and Parent has made available to Buyer a copy of each such letter, and, to the Knowledge of Sellers, no fact or event has occurred that would be reasonably likely to adversely affect the qualified status of any such Plan. Each trust established in connection with any Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code is so exempt, and, to the Knowledge of Sellers, no fact or event has occurred that would reasonably be expected to adversely affect the exempt status of any such trust.

(d) Except for the Seller Plans as set forth on Schedule 5.14(d) (the "Pension Plans"), no Plan is, and none of Parent, Sellers, the Acquired Company or any of their ERISA Affiliates has any obligation or liability (whether actual or contingent) with respect to any plan that is, subject to Section 412 or 430 of the Code or Title IV of ERISA. No Pension Plan has failed to satisfy the minimum funding standards of Section 302 or 303 of ERISA or Section 412 or 430 of the Code, as applicable. With respect to each Pension Plan, (i) no liability to the Pension Benefit Guaranty Corporation ("PBGC") has been incurred (other than for premiums not yet due); (ii) no notice of intent to terminate any such Pension Plan has been filed with the PBGC or distributed to participants therein and no amendment terminating any such Pension Plan has been adopted; (iii) no proceedings to terminate any such Pension Plan instituted by the PBGC are pending or, to the Knowledge of Sellers, are threatened and no event or condition has occurred which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any such Pension Plan; (iv) no such Pension Plan is in "at risk" status, within the meaning of Section 430 of the Code or Section 303 of ERISA; (v) no "reportable event" within the meaning of Section 4043 of ERISA (for which the 30-day notice requirement has not been waived by the PBGC) has occurred within the last six (6) years; (vi) no lien has arisen or, to the Knowledge of Sellers, would reasonably be expected to arise as a result of actions or inactions under ERISA or the Code on the assets of the Acquired Company; and (vi) to the Knowledge of Sellers, there has been no cessation of operations at a facility subject to the provisions of Section 4062(e) of ERISA ("4062(e) Event") within the last six (6) years (other than a 4062(e) Event to the extent arising from the execution and delivery of this Agreement and the transactions contemplated hereby).

(e) Except for the Seller Plans set forth on Schedule 5.14(e) (the "Multiemployer Plans"), no Plan is, and none of Parent, Sellers, the Acquired Company or any of their ERISA Affiliates has any obligation or liability (whether actual or contingent) with respect to any plan that is, a multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA. (i) No Multiemployer Plan is insolvent or in reorganization; (ii) no Multiemployer Plan is in "endangered" or "critical" status (within the meaning of Section 305 of ERISA); (iii) none of Parent, Sellers, the Acquired Company or any ERISA Affiliate thereof has incurred any material liability (including any indirect, contingent or secondary liability) to or on account of a Plan pursuant to Section 436(f) of the Code, or to or on account of a Multiemployer Plan pursuant to Sections 515, 4201, 4204 or 4212 of ERISA or expects to incur any such liability under any of the foregoing sections with respect to any Multiemployer Plan; (iv) using actuarial assumptions and computation methods consistent with Part 1 of subtitle E of Title IV of ERISA, Parent, Sellers, the Acquired Company and their ERISA Affiliates would not incur any liabilities with respect to any Multiemployer Plans in the event of a complete or partial withdrawal therefrom; (v) no lien imposed under the Code or ERISA on the assets of Parent, Sellers, the Acquired Company or any ERISA Affiliate exists or, to the Knowledge of Sellers, is likely to arise on account of any Multiemployer Plan; and (vi) Parent, Sellers, the Acquired Companies and their ERISA Affiliates have made all required contributions and are not delinquent in any contributions to any Multiemployer Plan.

(f) The Acquired Company has not incurred and, to the Knowledge of Sellers, there are no circumstances under which it could reasonably be expected to incur liability under Title IV of ERISA or any liability arising out of or relating to any Pension Plan or Multiemployer Plan. No Plan is a "multiple employer welfare plan" within the meaning of Section 3(40) of ERISA or a multiple employer plan within the meaning of Section 413(c) of the Code or Section 4063 of ERISA.

(g) No Plan provides, and the Acquired Company has no obligation to provide, health, accident, disability, life or other welfare or insurance benefits to any current or former Service Provider (or any spouse, beneficiary or dependent of the foregoing) beyond termination of employment or service, other than health continuation coverage pursuant to Section 4980B of the Code or any similar Requirements of Law (collectively, "COBRA"). The Acquired Company is and, with respect to the Business, Parent, Sellers and their Affiliates are in compliance in all material respects with (i) the applicable requirements of COBRA and (ii) the applicable requirements of the Patient Protection and Affordable Care Act of 2010, as amended.

(h) With respect to the Plans, no event has occurred and, to the Knowledge of Sellers, there exists no condition or set of circumstances in connection with which the Acquired Company or, following the Closing, Buyer or any of its Affiliates could be subject to any material Liability (other than routine claims for benefits) under the terms thereof, or with respect thereto, or under any applicable Requirements of Law.

(i) With respect to the Business, (i) all contributions required to have been made under the terms of any Plan have been timely paid or made in full or, to the extent not yet due, properly accrued on the latest balance sheet of Parent, Sellers, the Acquired Company or the appropriate Affiliate thereof in accordance with the terms of the Plan and all applicable Requirements of Law, (ii) no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary duty in connection with the administration or investment of the assets of any Plan has occurred, (iii) none of the assets of Parent, Sellers, the Acquired Company or their ERISA Affiliates is, or may reasonably be expected to become, the subject of any lien arising under applicable law (including ERISA or the Code), and (iv) no Plan or Plan fiduciary is the subject of an ongoing, pending or, to the Knowledge of Sellers, threatened audit or investigation by any Governmental Body.

(j) Except as set forth on Schedule 5.14(j), neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, either alone or in combination with another event (whether contingent or otherwise) will (i) entitle any current or former Service Provider to any payment or benefit; (ii) increase the amount of compensation or benefits due to any such Service Provider; or (iii) accelerate the vesting, funding or time of payment of any compensation, equity award or other benefit to any such Service Provider.

(k) Except as set forth on Schedule 5.14(k), (i) each Non-US Plan required to be registered or approved by any Governmental Body has been so registered or approved, and has been administered in good standing in all material respects with such Governmental Body, (ii) each Non-US Plan that is intended to qualify for favorable Tax benefits under the applicable Requirements of Law of any jurisdiction is so qualified, (iii) each Non-US Plan that is intended to be funded or book reserved is fully funded or book reserved, as appropriate, based on reasonable actuarial assumptions, and (iv) no Non-US Plan has any unfunded or underfunded liabilities not accurately accrued in accordance with applicable accounting standards.

(l) With regard to Plan(s) involving Transferring German Employees, all contributions for such Plan(s) and their financing have been duly made or appropriate provisions (*Rückstellungen*) have been made in accordance with applicable Requirements of Law.

Section 5.15 Employee Relations and Agreements.

(a) Except for the collective bargaining agreement set forth on Schedule 5.15(a) (the "CBA"), neither the Acquired Company nor, with respect to the Business, Parent, any Seller or any Affiliate thereof, is a party to any labor contract, collective bargaining agreement, works council agreement or any other similar Contract with any labor organization, union, works council or similar association or body. Parent has provided to Buyer a true and complete copy of the CBA, together with any addendums and supplements thereto. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby require consent by, notification to, or consultation with any labor union, works council or similar employee representative body (including, without limitation, pursuant to the CBA).

(b) (i) There are no labor strikes, work stoppages or lockouts pending or, to the Knowledge of Sellers, threatened, against the Acquired Company or, with respect to the Business, Parent, any Seller or any of their Affiliates, and none of have occurred within the past three (3) years; (ii) to the Knowledge of Sellers, no union organizational campaign or works council establishment is in progress with respect to the Business Employees; (iii) neither the Acquired Company nor, with respect to the Business, Parent, any Seller or any Affiliate thereof is a party to or, to the Knowledge of Sellers, has been threatened with, any dispute with any of its employees or any dispute or controversy with a union or with respect to unionization or collective bargaining involving the Business Employees and (iv) the Acquired Company and, with respect to the Business, Parent, each Seller and each Affiliate thereof is in compliance in all material respects with all applicable Requirements of Law respecting employment and employment practices, terms and conditions of employment, worker classification, wages, hours of work, withholding, immigration, collective bargaining, fair labor standards, occupational safety and health and other labor and employment-related matters. There are no unfair labor practice charges pending before the National Labor Relations Board or any other Governmental Body, nor any grievances, complaints, claims or judicial or administrative proceedings, in each case, which are pending or, to the Knowledge of Sellers, threatened by or on behalf of any Service Providers.

(c) Schedule 5.15(c) lists all Service Providers as of July 16, 2020, including the following items for each such Person, to the extent permitted by applicable Requirements of Law: name or employee identification number, employee or contractor status, job or title, primary work location, visa status (if applicable), annual compensation (including annual salary or wage rate and target cash incentive opportunity), accrued vacation and paid time off (including annual leave, long service leave, *congés payés*, *RTT* and *jours de repos acquis* or *en cours d'acquisition*), job classification (overtime exempt or non-exempt status, if applicable), and the name of such Person's engaging entity, and whether such individual is on an approved leave of absence and, if so, the type of such leave. Parent and its Affiliates maintain accurate and complete Form I-9s with respect to each U.S. Business Employee in accordance with applicable Requirements of Law. Sellers have provided to Buyer all information required by regulation 11 of TUPE in respect of the UK Business Employees. Each Business Employee has completed a satisfactory background check prior to commencing service with the Acquired Company, Parent, Sellers, and/or their Affiliates.

(d) The Acquired Company and, with respect to the Business, Parent, Sellers and their Affiliates (other than the Acquired Company) have paid in full to all of the Service Providers or adequately accrued in accordance with GAAP all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such Service Providers. All individuals providing services to the Business have been properly classified as either employees or independent contractors and as exempt or non-exempt for all purposes (including for purposes of the Plans).

(e) During the three (3) years prior to the date of this Agreement, none of Parent, Sellers or their Affiliates (including the Acquired Company) has engaged in or effectuated any "plant closing" or employee "mass layoff" (in each case, as defined in the Worker Adjustment Retraining and Notification Act of 1988, as amended (the "WARN Act"), or any similar state or local statute, rule or regulation) affecting Business Employee or any site of employment or one or more facilities or operating units of the Business.

(f) No executive or key employee of the Business has informed Parent, Sellers or any of their Affiliates (including the Acquired Company) of any plan to terminate employment with or services for Parent, Sellers or their Affiliates (including the Acquired Company), and, to the Knowledge of Sellers, no such Person or Persons has any plans to terminate such employment or services. No claims or allegations have been made against any Business Employee (in each case with respect to the Business) or, with respect to the Business, Parent, Sellers or any of their Affiliates (including the Acquired Company) for discrimination, sexual or other harassment, or retaliation, nor are any such claims pending or, to the Knowledge of Sellers, threatened.

(g) Since January 1, 2020, with respect to the Business, Parent, Sellers and their Affiliates have not taken any material action related to COVID-19 with respect to the Service Providers, including implementing, in response to COVID-19, any workforce reductions, terminations, furloughs, reductions in or changes to compensation, benefits or working schedules, or changes to Plans.

Section 5.16 **Environmental Matters**. Except as set forth in Schedule 5.16:

(a) the Acquired Company and, with respect to the Business Parent and each Asset Seller is and, during the past three (3) years has been, in compliance in all material respects with all applicable Environmental Laws and the Acquired Company or an Asset Seller owns, holds or possesses all material Governmental Permits which are necessary under Environmental Laws to conduct the Business in all material respects as conducted immediately prior to the date of this Agreement, and all such Governmental Permits are valid, subsisting and in full force and effect, except, in each case, as would not reasonably be expected to adversely affect the Acquired Company and Acquired Assets in any material respect;

(b) the Acquired Company and, with respect to the Business, Parent and the Asset Sellers, are not subject to any pending judicial or administrative proceeding, Order or settlement alleging or addressing a material violation of or material liability under any Environmental Law;

(c) during the past three (3) years, neither the Acquired Company nor, with respect to the Business, Parent or any Asset Seller has received any written notice or claim to the effect that it is liable to any Person, including any Governmental Body, as a result of the Release of a Hazardous Material, which notice or claim would reasonably be expected to adversely affect the Acquired Company and Acquired Assets in any material respect;

(d) during the past three (3) years, neither the Acquired Company nor, with respect to the Business, Parent or any Asset Seller has handled, treated, stored, disposed of, arranged for or permitted the disposal of, transported, released or exposed any person to any Hazardous Materials in violation of any applicable Environmental Law, and none of the Owned Real Property or the Leased Real Property are contaminated by any Hazardous Material, in each case as has given rise to material liabilities under applicable Environmental Laws; and

(e) neither the Acquired Company nor, with respect to the Business, Parent or any Asset Seller has retained or assumed, by Contract or, to the Knowledge of Sellers, by operation of Requirements of Law, any material liabilities of any other Person under applicable Environmental Laws.

Section 5.17 **No Undisclosed Liabilities**. None of the Acquired Company or, with respect to the Business, Parent or any Asset Seller is subject to any material Liability of a nature that would be required to be included on a balance sheet prepared in accordance with GAAP consistent with past practice, other than Liabilities (a) adequately reflected on, or reserved against in, the balance sheet dated as of the Balance Sheet Date that is included in the Financial Statements, (b) set forth in Schedule 5.17, (c) incurred since the Balance Sheet Date in the ordinary course of business of the Business consistent with past practice, or (d) in respect of Transaction Expenses.

Section 5.18 **Related Party Contracts**. Schedule 5.18 sets forth a complete list of any Contracts (other than an employment or similar Contract) by and between the Acquired Company or, with respect to the Business, any Asset Seller, on the one hand, and Parent, any Affiliate of Parent (other than the Acquired Company or any Asset Seller) or, to the Knowledge of Sellers, any officer, director or employee of Parent or any Affiliate of Parent (including the Acquired Company), on the other hand (each, a "Related Party Contract").

Section 5.19 **Insurance**. Schedule 5.19 sets forth a true and complete list of all fire, product liability, property, casualty, directors and officers, fiduciary liability, workers' compensation, vehicular, business interruption and other insurance policies by which the Business is insured as of the date of this Agreement, including whether such policy holder is (a) Parent or an Affiliate thereof other than the Acquired Company (collectively, the "Parent Insurance Policies") or (b) the Acquired Company (collectively, the "Company Insurance Policies" and, together with the Parent Insurance Policies the "Insurance Policies"). The Insurance Policies are in full force and effect and there are not any premiums due on such Insurance Policies that have not been paid. There are no material claims related to the Business pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. True and correct copies of all Insurance Policies have been provided to Buyer prior to the date of this Agreement.

Section 5.20 **Product Liability**.

(a) Except as set forth on Schedule 5.20(a), neither the Acquired Company nor, with respect to the Business, Parent or any Asset Seller has any material undischarged liability with respect to any product designed, manufactured or sold by the Business arising out of (a) any injury to individuals or property proximately caused by such product, (b) any defect in design or manufacture of such product, (c) any failure to warn in compliance with applicable Requirements of Law with respect to such product or (d) any recall or post-sale warning of such product. To the Knowledge of Sellers, there are, and have been, no defects in design, manufacturing, materials or workmanship (including any failure to warn) or any breach of product warranties, which involve any Product manufactured, shipped, sold or delivered by or on behalf of the Acquired Company or, with respect to the Business, Parent or any Asset Seller.

(b) Schedule 5.20(b) sets forth, with respect to the Products, a list of (i) all recalls, field notifications, field corrections, market withdrawals or replacements, warnings, "dear doctor" letters, investigator notices, safety alerts or other notice of action relating to an alleged lack of safety or regulatory compliance of the Products ("Safety Notices") during the last three (3) years, and (ii) the dates such Safety Notices, if any, were resolved or closed.

Section 5.21 **Customers and Suppliers**. Schedule 5.21 sets forth (a) a complete and correct list of customers of the Business accounting for five percent (5%) or more of the sales of the Business for (i) the fiscal year ended December 31, 2019 and (ii) the six (6)-month period ended June 30, 2020 (the "Material Customers") and (b) a complete and correct list of suppliers, service providers or other similar business relations of the Business (the "Material Suppliers") accounting for five percent (5%) or more of the purchases of the Business for (i) the fiscal year ended December 31, 2019 and (ii) the six (6)-month period ended June 30, 2020, and sets forth opposite the name of each such Material Customer and Material Supplier the approximate dollar amount of net sales and/or amounts paid by Parent, the Acquired Company or Asset Seller, as applicable, attributable to such Material Customer or Material Supplier for each such period. Since January 1, 2019, (A) no Material Customer has provided any written notice to the effect that any such Material Customer intends to or shall cease being a customer of the Business or shall materially decrease the rate of, or materially change the terms with respect to, buying products or services from the Business (whether as a result of the consummation of the transactions contemplated hereby or otherwise) and (B) no Material Supplier has provided any written notice to the effect that any such Material Supplier intends to or shall cease doing business with the Business or intends to or shall materially decrease the rate of, or materially change the terms with respect to, supplying materials, products or services to the Business (whether as a result of the consummation of the transactions contemplated hereby or otherwise). Neither the Acquired Company nor any Asset Seller (in each case with respect to the Business) are involved (and have not been involved since January 1, 2019) in any material claim, dispute or controversy with any Material Customer or Material Supplier.

Section 5.22 **No Other Representations**. Except for the representations and warranties contained in this Article V, Parent makes no representation or warranty, express or implied, regarding the Business, the Acquired Company and the transactions contemplated hereby.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES CONCERNING BUYER AND THE TRANSACTION

As an inducement to Parent to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer represents and warrants to Parent, as of the date hereof and the Closing Date (or, with respect to any representations and warranties made as of any particular date, as of such date), as follows:

Section 6.1 **Organization of Buyer**. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Nevada. Buyer has the requisite power and authority to own or lease and operate its assets as and where currently owned, operated and leased and to carry on its businesses in all material respects in the manner that they were conducted immediately prior to the date of this Agreement.

Section 6.2 **Authority of Buyer; Conflicts**.

(a) Buyer has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and each of the Buyer Ancillary Agreements. The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by Buyer's board of directors and do not require any further authorization, consent or other proceeding of Buyer or its stockholders. This Agreement has been duly and validly authorized, executed and delivered by Buyer and represents (assuming the valid authorization, execution and delivery of this Agreement by the other parties hereto) the legal, valid and binding agreement of Buyer enforceable against Buyer in accordance with its terms, and each of the Buyer Ancillary Agreements has been duly authorized by Buyer and upon execution and delivery by Buyer will represent (assuming the valid authorization, execution and delivery by the other party or parties thereto) a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, in each case subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Requirements of Law of general application relating to or affecting creditors' rights and to general equity principles.

(b) None of the execution, delivery or performance by Buyer of this Agreement or any of the Buyer Ancillary Agreements or the consummation by Buyer of any of the transactions contemplated hereby or thereby, nor compliance by Buyer with or fulfillment of the terms, conditions and provisions hereof or thereof will:

(i) assuming the receipt of all necessary consents and approvals and the filing of all necessary documents as described in Section 6.2(b)(ii), result in a violation or breach of the terms, conditions or provisions of, conflict with or constitute a default under any provision of, an event of default or an event that, after notice or lapse of time or both, would result in the creation of rights of acceleration, termination or cancellation or a loss of rights under (A) the Organizational Documents of Buyer, (B) any material Contract to which Buyer is a party or any of its properties is subject or by which Buyer is bound, (C) any Order to which Buyer is a party or by which it is bound or (D) any Requirements of Law affecting Buyer, other than, in the case of clauses (B), (C) and (D) above, any such violations, breaches, defaults, rights or loss of rights that, individually or in the aggregate, would not materially delay or materially impair the ability of Buyer to perform its obligations hereunder or prevent the consummation of any of the transactions contemplated hereby; or

(ii) require the approval, consent, authorization or act of, the notice to or the making by Buyer of any declaration, filing or registration with, any Person, except for (A) in connection with or in compliance with the provisions of the HSR Act, (B) such filings as may be required in connection with the Taxes described in Section 8.1 and (C) such approvals, consents, authorizations, declarations, filings or registrations the failure of which to be obtained or made would not materially impair the ability of Buyer to perform its obligations hereunder or prevent the consummation of any of the transactions contemplated hereby.

Section 6.3 No Violation, Litigation or Regulatory Action. Except as set forth in Schedule 6.3:

(a) as of the date hereof, there are no Proceedings pending or, to the knowledge of Buyer, threatened in writing against Buyer or its Affiliates which are reasonably expected to materially impair the ability of Buyer to perform its obligations hereunder or prevent the consummation of any of the transactions contemplated hereby;

(b) as of the date hereof, there are no Proceedings pending or, to the knowledge of Buyer, threatened in writing that question the legality of the transactions contemplated by this Agreement or any of the Buyer Ancillary Agreements; and

(c) Buyer is not subject to any outstanding Order that prohibits or otherwise restricts the ability of Buyer to consummate fully the transactions contemplated by this Agreement or any of the Buyer Ancillary Agreements.

Section 6.4 **Financial Capability**. Buyer will have at the Closing access to immediately available U.S. funds sufficient to enable Buyer to pay the Purchase Price, to permit Buyer to perform in a timely manner all of its obligations under this Agreement, and to consummate the transactions contemplated by this Agreement, in accordance with the terms and subject to the conditions herein. Buyer acknowledges and agrees that its obligations under this Agreement, including its obligations to consummate the Closing, are not contingent upon its receipt of financing of any kind.

Section 6.5 **Investment Intent**. Buyer is acquiring the Purchased Interests as an investment for its own account and not with a view to the distribution thereof in violation of the Securities Act of 1933 or any applicable state securities laws. Buyer shall not sell, transfer, assign, pledge or hypothecate any of the Purchased Interests in the absence of registration under, or pursuant to an applicable exemption from, federal and applicable state securities laws.

Section 6.6 **Solvency**. Immediately after giving effect to the consummation of the transactions contemplated by this Agreement and for a period of not less than ninety (90) days thereafter: (a) the fair saleable value (determined on a going concern basis) of the assets of Buyer will be greater than the total amount of its Liabilities (whether or not reflected in a balance sheet prepared in accordance with GAAP, and whether direct or indirect, fixed or contingent, secured or unsecured, disputed or undisputed); (b) Buyer will be able to pay its debts and obligations in the ordinary course of business as they become due; and (c) Buyer will have adequate capital to carry on its businesses (including the Business), in each case, in the ordinary course of business.

Section 6.7 **No Brokers**. Except as set forth on Schedule 6.7, neither Buyer nor any Person acting on its behalf has paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement or Buyer Ancillary Agreements.

Section 6.8 **No Other Representations**. Except for the representations and warranties contained in this Article VI, neither Buyer nor any other Person acting on behalf of Buyer makes any representation or warranty, express or implied, regarding Buyer and the transactions contemplated hereby.

ARTICLE VII

ACTIONS PRIOR TO THE CLOSING DATE

Section 7.1 **Access to Information**. Subject to Buyer's obligations under the Confidentiality Agreement, Parent shall, and shall cause the Sellers to, afford to the officers, employees and authorized representatives of Buyer (including independent public accountants and attorneys) reasonable access during normal business hours, upon reasonable advance notice, to the offices, properties, assets and business, regulatory and financial records of the Business and shall furnish to Buyer or such authorized representatives such additional information concerning the Business as shall be reasonably requested; provided, however, that (i) Parent shall not be required to violate any obligation of confidentiality, Order or Requirements of Law to which the Acquired Company or any Seller is subject or to waive any privilege which any of them may possess in discharging its obligations pursuant to this Section 7.1 (but in such event Parent shall use its reasonable best efforts to cooperate with Buyer to seek an appropriate remedy to permit the access contemplated hereby); and (ii) neither Buyer nor any of its officers, employees, agents or representatives shall have access to any employees of the Acquired Company or the Asset Sellers without Parent's prior written consent. Buyer hereby acknowledges and agrees that any investigation pursuant to this Section 7.1 shall be conducted in such a manner as not to interfere unreasonably with the operations of Parent or the Business and Buyer shall not be permitted to undertake any environmental sampling or invasive testing without Parent's prior written consent, which shall be in Parent's sole discretion.

Section 7.2 **Notifications**. Buyer and Parent shall promptly notify the other of any Proceeding that shall be instituted or threatened against such party to restrain, prohibit or otherwise challenge the legality of any transaction contemplated by this Agreement.

Section 7.3 **Consents of Third Parties; Governmental Approvals**.

(a) During the period prior to the Closing Date, each party hereto shall act diligently and reasonably and shall use its reasonable best efforts to cooperate with the other parties in attempting to secure any consents, waivers and approvals of any third party (including Governmental Approvals) required to be obtained to consummate the transactions contemplated by this Agreement and to perfect the transfer or new obtainment of any Governmental Permits necessary for conducting the Business after the Closing Date; provided, however, that, notwithstanding anything to the contrary in this Agreement, subject to Section 7.3(b), 7.3(c) and 7.3(d), such action shall not include any requirement of either party or any of such party's Affiliates (including the Acquired Company or Sellers on or prior to the Closing Date) to pay money to any third party (other than filing and application fees), commence or participate in any litigation, offer or grant any accommodation or undertake any obligation or liability (in each case financial or otherwise) to any third party (including any Governmental Body); provided further, however, that, prior to the Closing, neither Buyer nor its Affiliates nor any of their respective officers, employees or authorized representatives may contact any customer, supplier, independent service provider, lessor or other business relation of the Business in connection with any such consent without Parent's prior written consent.

(b) Without limiting the generality of (but subject to) the foregoing, upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto agrees to, and shall cause their respective Affiliates to, use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party in doing all things necessary, proper or advisable to consummate, as promptly as reasonably practicable, the transactions contemplated by this Agreement, including obtaining all necessary Governmental Approvals or third party waivers, consents, and approvals and making all necessary Governmental Filings and taking all steps as may be necessary to obtain all required Governmental Approvals (including those in connection with the HSR Act). Buyer and Parent shall keep the other party informed in all respects of any substantive communication received by such party from, or given by such party to, any Governmental Body and of any substantive communication received or given in connection with any Proceeding by a private party relating to the transactions contemplated by this Agreement, in each case regarding any of the transactions contemplated hereby, and shall permit the other party to review in advance and comment on, and shall consider in good faith the views of the other party with respect to, any substantive communication proposed to be delivered to, and consult with the other party in advance of any meeting or conference with, any Governmental Body relating to the transactions contemplated by this Agreement or in connection with any Proceeding by a private party, and shall give the other party the opportunity to attend and participate in such meetings and conferences (to the extent permitted by such Governmental Body or private party). No party to this Agreement shall consent to any voluntary delay of the consummation of the transactions contemplated hereby at the behest of any Governmental Body without the consent of the other party to this Agreement, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Without limiting the generality of the foregoing, the parties hereto shall cooperate with each other and shall use their reasonable best efforts to file required Notification and Report Forms under the HSR Act with the FTC and DOJ as soon as practicable following the date of this Agreement, but in no event later than ten (10) Business Days after the date hereof, and shall respond as promptly as practicable to all requests or inquiries received from any Governmental Body for additional documentation or information, including any request for additional information and documentary material from the FTC or DOJ. Buyer and Parent shall bear equally (50/50) all filing fees paid to any Governmental Body in connection with any required Governmental Approval in respect of antitrust or merger control Requirements of Law (including, for the avoidance of doubt, the filing fee required in connection with the HSR Act filing).

(d) Without limiting the generality of the foregoing, the parties hereto shall use their reasonable best efforts to initiate, pursue or defend against any Proceeding, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby under any antitrust, merger control, competition or trade regulation Requirements of Law, including under the HSR Act, that may be asserted by any Governmental Body or third party with respect to the transactions contemplated by this Agreement, and seek to have any stay or Order entered into by any court or other Governmental Body vacated or reversed. Notwithstanding anything contained herein to the contrary, nothing in this Section 7.3 or otherwise in this Agreement shall require Buyer or its Affiliates to (and Parent and its Affiliates shall not, without Buyer's prior written consent) propose, negotiate, commit to or effect by consent decree, hold separate order or otherwise, the sale, divestiture, licensing or disposition of any assets or businesses of Buyer, Buyer's Affiliates, the Acquired Company, the Acquired Assets or the Business, or any conduct or behavioral commitments, requirements or restrictions, or otherwise take or commit to take actions that limit Buyer's or its Affiliates' freedom of action with respect to, or the ability to retain, any of the businesses, product lines or assets of Buyer, Buyer's Affiliates, the Acquired Company, the Acquired Assets or the Business.

Section 7.4 Operations Prior to the Closing Date.

(a) Prior to the Closing, Parent shall, and shall cause the Acquired Company and, with respect to the Business, the Asset Sellers to, operate and carry on the Business in the ordinary course consistent with past practice and substantially as operated immediately prior to the date of this Agreement and use commercially reasonable efforts to:

(i) preserve the business relationships of the Business and keep available the services of its key employees and maintain its relations and goodwill with its key suppliers, customers, employees and others having business relationships with the Business;

(ii) maintain in effect all Intellectual Property included in the Acquired Assets and applications and registrations for Intellectual Property included in the Acquired Assets (other than abandonments, expirations and cancellations occurring in the ordinary course of business consistent with past practice that are not material, individually or in the aggregate, to the Business); and

(iii) maintain all material structures, equipment and other tangible personal property of the Business, in their present repair, order and condition, except for depletion in the ordinary course of business and ordinary wear and tear.

(b) Without limiting the generality of Section 7.4(a), except as required by applicable Requirements of Law, as expressly contemplated by this Agreement, with the express prior written approval of Buyer (which Buyer agrees shall not be unreasonably withheld, conditioned or delayed) or as set forth on Schedule 7.4(b), Parent shall cause the Acquired Company and, with respect to the Business or the Acquired Assets, the Asset Sellers, other than in the ordinary course of business consistent with past practice, not to:

(i) purchase or otherwise acquire any assets (including real property) or make any capital expenditures, in each case that are material, individually or in the aggregate, to the Business (other than capital expenditures that do not exceed $250,000 individually or $500,000 in the aggregate);

(ii) sell, lease, license, sublicense, abandon, encumber (other than Permitted Encumbrances) or otherwise transfer or dispose of, or grant any purchase options or rights with respect to, any assets, properties (including real property) or interests of the Business or any interest therein, or enter into any agreement to do any of the foregoing (other than the sale of inventory in the ordinary course of business consistent with past practice and other than the disposition of obsolete assets or other assets not used in the Business during the twelve (12) months preceding the date hereof);

(iii) alter (except for maintenance in the ordinary course of business), demolish or remove any improvements on the Real Property or erect improvements on the Real Property or any portion thereof;

(iv) make any loan to any third party in connection with the Business or create or allow the Business to create, incur, assume or guarantee any indebtedness for borrowed money (other than as will be discharged on or prior to the Closing Date);

(v) transfer any assets to Parent or any of its Affiliates (other than the Acquired Company), other than Cash and Cash Equivalents and other than in connection with settling any intercompany accounts, balances or other transactions prior to the Closing;

(vi) materially increase the benefits provided under any Plan to any current or former Service Provider, other than in the ordinary course of business consistent with past practice or as required by the terms of any Plan or Contract or pursuant to Requirements of Law;

(vii) materially increase the base salary, wages, bonus opportunity or other compensation or benefits of any Business Employee who is an officer or has an annual base salary of more than $150,000, except as required by the terms of any Plan or Contract (in each case, in effect as of the date hereof) or pursuant to Requirements of Law, whether or not in the ordinary course of business consistent with past practice;

(viii) establish, adopt, materially amend or terminate any Plan in a manner that impacts the compensation and/or benefits provided to Service Providers or any collective bargaining or similar agreement (including the CBA), except as required to comply with Requirements of Law;

(ix) grant any compensatory equity awards or accelerate the vesting or payment of any compensation or benefits to or for the benefit of any Service Provider, other than as required to comply with Requirements of Law, whether or not in the ordinary course of business consistent with past practice;

(x) hire, promote or terminate (other than for cause) any Service Provider who is an officer or has an annual base compensation of more than $75,000, or transfer the employment or engagement of any Service Provider from the Acquired Company to any Affiliate thereof, or transfer the employment or engagement of any Person from Parent, Sellers or their Affiliates (other than any Acquired Company) to the Acquired Company;

(xi) acquire by merging or consolidating with, or by purchasing a substantial portion of the capital stock or assets of, directly or indirectly, any business or any corporation, partnership, association or other business organization or division thereof;

(xii) accelerate, terminate, materially modify or amend any Material Contract, or enter into any Contract that would be a Material Contract if in existence as of the date hereof;

(xiii) make any material change in the accounting methods or policies of the Business (including in its cash management practices and its policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits), unless such change is required by GAAP or applicable Requirements of Law;

(xiv) make, change or revoke any Tax election; adopt or change any accounting method with respect to Taxes with respect to the Business; file any amended Tax Return; enter into any closing agreement with respect to the Business; settle or compromise any Tax claim or assessment with respect to the Business; or consent to any extension or waiver of the limitation period applicable to any claim or assessment with respect to Taxes of the Business;

(xv) issue, deliver or sell any securities of the Acquired Company;

(xvi) amend the Organizational Documents of the Acquired Company;

(xvii) enter into a new line of business or abandon or discontinue any existing lines of business;

(xviii) adopt any plan of merger, consolidation, reorganization, liquidation or dissolution or file of a petition in bankruptcy under any provisions of federal or state bankruptcy law or consent to the filing of any bankruptcy petition against it under any similar Requirements of Law;

(xix) waive or settle any claims or rights that Relate to the Business which claims or rights are material to the Business (except for any Excluded Liabilities); provided that any Seller may settle any such claim if such settlement does not provide for any relief other than the payment of monetary damages and such payment is made by a Seller or one of Sellers' Affiliates (other than the Acquired Company) prior to the Closing; or

(xx) agree to do any of the foregoing.

Section 7.5 **Termination of Related Party Contracts**. Except as contemplated by the Parent Ancillary Agreements or the Buyer Ancillary Agreements, on or prior to the Closing Date, all Related Party Contracts other than the Related Party Contracts set forth in Schedule 7.5 shall be terminated and shall be of no further force and effect after the Closing.

Section 7.6 **Parent's Financing Cooperation**.

(a) Parent agrees to, and to cause its Affiliates to, use reasonable best efforts to provide such assistance (and to use reasonable best efforts to cause its and their respective representatives to provide such assistance) with respect to the Equity Financing, any Alternative Financing, any Replacement Financing or any equity or equity-linked offerings or placements (collectively, the "Financing") as is reasonably requested by Buyer, in each case at Buyer's sole cost and expense, including using reasonable best efforts with respect to:

(i) upon request participating in a limited number of conference calls with prospective investors;

(ii) delivering to Buyer as promptly as reasonably practicable documentation and other information reasonably requested thereby (on behalf of the Financing Sources) under applicable "know-your customer" and anti-money laundering rules and regulations;

(iii) furnishing Buyer and its Financing Sources with:

(A) for any fiscal quarter (except the fourth quarter of any fiscal year) that ends between the date hereof and the earlier of Closing or termination of this Agreement under Article X, within 45 days of such fiscal quarter end, Parent shall deliver to Buyer as of and for such fiscal quarter: (1) the unaudited consolidated balance sheet of the Business and (2) the unaudited consolidated statement of profit and loss and cash flows of the Business (the "Interim Quarterly Financial Statements"); and

(B) for any fiscal year that ends between the date hereof and the earlier of Closing or termination of this Agreement under Article X, within 70 days of such year end, Parent shall deliver to Buyer as of and for such fiscal year: (1) the audited consolidated balance sheet of the Business and (2) the audited consolidated statement of profit and loss and cash flows of the Business (together with the Interim Quarterly Financial Statements, the "Interim Financial Statements"); provided, however, that the accounting costs and expenses incurred in connection with preparing any Interim Financial Statements pursuant to this Section 7.6 shall be shared by Parent and Buyer equally.

(iv) causing its independent auditors to reasonably cooperate with the Financing consistent with their customary practice, including by providing customary "comfort letters" (including customary "negative assurances") and customary consents to the inclusion of audit reports in any relevant marketing materials, prospectuses, offering memoranda, registration statements and related government filings;

(v) providing customary information relating to the Business as reasonably requested by Buyer to assist Buyer and the Financing Sources in the preparation of (A) offering documents, prospectuses, registration statements, syndication documents and materials, including bank information memoranda (confidential and public), private placement memoranda, offering memoranda, lender and investor presentations and similar documents for the Financing and (B) materials for rating agency presentations, and similar documents in connection with the Financing;

(vi) cooperating reasonably with each Financing Source's due diligence, including in relation to the provision of any reports produced in connection with the transaction; and

(vii) providing customary projected financial information relating only to the Business as reasonably requested by Buyer to permit Buyer to prepare customary projected financial information relating to Buyer (to be prepared on a pro forma basis assuming the consummation of the transactions contemplated by this Agreement) which are customarily required by financing sources similar to those described in the Equity Commitment or for purposes of obtaining corporate and debt ratings.

(b) The Interim Financial Statements shall be prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby and the books and records of Parent, in a manner consistent with the preparation of the Financial Statements for the equivalent periods, including with respect to (i) footnote disclosure (except, in the case of Interim Financial Statements, such exceptions and omitted footnotes as are customary in the preparation of interim financial statements) and (ii) the audit or review, as applicable, of Parent's independent accountants. Parent agrees to consent to the inclusion of the Required Information in any filings by Buyer with the SEC or any other securities regulatory authority or exchange. Parent agrees that it will use reasonable best efforts to cause its independent accountants to provide to Buyer with a consent for the use of its report relating to any Required Information obtained by Buyer pursuant to this Section 7.6 in any filing with the U.S. Securities and Exchange Commission filings by or on behalf of Buyer.

(c) Parent hereby consents to the use of all of its and its Affiliates' logos in connection with the Financing, provided that such logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage Parent or any of its Affiliates or the reputation or goodwill of Parent or any of its Affiliates. Notwithstanding any other provision set forth herein or in any other agreement between the Parent and Buyer (or its Affiliates), Parent agrees that Buyer and its Affiliates may share customary projections with respect to the Business with the Financing Sources identified in the Equity Commitment and to any existing lenders of the Buyer, and that Buyer, its Affiliates and such Financing Sources may share such information with potential Financing Sources in connection with any marketing efforts in connection with the Financing, provided that the recipients of such information are subject to customary confidentiality arrangements between Buyer and such parties (which need not include Parent).

(d) Notwithstanding anything to the contrary in this Agreement, none of Parent, any of its Affiliates or any of its or their respective directors or officers or other personnel shall be required by this Section 7.6 (1) to take any action or provide any assistance that unreasonably interferes with the ongoing operations of Parent and its Affiliates; (2) to pass resolutions or consents to approve or authorize the execution of the Equity Financing or the Equity Financing Documents (other than customary authorization and representation letters provided in connection with marketing or offering documents); (3) to execute or deliver any certificate, document, instrument or agreement that is effective prior to the Closing or agree to any change or modification of any existing certificate, document, instrument or agreement that is effective prior to the Closing (other than customary authorization and representation letters and a payoff letter with respect to any credit agreement); (4) to take any action or provide any assistance that would reasonably be expected to cause any representation or warranty in this Agreement or any other Parent Ancillary Agreement to be breached by Parent or any of its Affiliates; (5) to take any action or provide any assistance that would reasonably be expected to conflict with or violate any applicable Requirements of Law, the Organizational Documents of Parent or any of its Subsidiaries or any Contracts of Parent or any of its Subsidiaries; (6) to take any action or provide any assistance that would require Parent or any of its Subsidiaries to pay prior to the Closing any commitment or similar fee, or pay or reimburse any third party expense not reimbursable by Buyer under clause (x) below or otherwise payable by Parent under this Section 7.6, provide any indemnities, or incur or assume any liability or obligation, in connection with such Financing; (7) to take any action or provide any assistance that would reasonably be expected to cause any director, officer, employee or stockholder of Parent or any of its Subsidiaries to incur any personal liability; (8) to take any action or provide any assistance that involves providing access to or disclosure of information that Parent or any of its Subsidiaries determines would jeopardize any attorney-client privilege of Parent or any of its Subsidiaries; or (9) except as otherwise set forth in this Section 7.6, to take any action or provide any assistance that involves preparing or providing to Buyer or the Financing Sources any financial statements or information that are not available to Parent and prepared in the ordinary course of its financial reporting practice. Buyer shall (x) promptly upon request by Parent, reimburse Parent for all reasonable and documented out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Parent or any of its Subsidiaries in connection with providing the assistance contemplated by this Section 7.6, other than the costs and expenses incurred by Parent (or its Affiliates) in connection with the preparation of the audited 2018 and 2019 Financial Statements contemplated by Section 5.4(a)(ii), which shall be shared by Parent and Buyer equally, and (y) indemnify and hold harmless Parent and its Affiliates and its and their respective directors, officers, personnel and advisors from and against any and all liabilities, losses, damages, claims, costs, expenses (including attorneys' fees), interest, awards, judgments and penalties suffered or incurred in connection with the Financing or any assistance or activities in connection therewith (other than arising from fraud, intentional misrepresentations, material misstatements or material omissions on the part of Parent or any of its Affiliates or representatives).

Section 7.7 **Buyer's Financing Obligation**.

(a) Buyer hereby acknowledges and agrees that there is no contingency on Buyer's obligations under this Agreement related to Buyer's ability to secure financing. Promptly after entering into the Equity Commitment, Buyer shall deliver to Parent a true and complete copy of the executed Equity Commitment and any related fee letters (redacted as to economic terms and other commercially sensitive numbers and provisions specified in any such fee letter (including any provisions relating to "flex" terms or similar concepts) excluding in each case, any such provisions that could adversely affect the amount of the financing or the Equity Financing Conditions). On and after the date of the Equity Commitment, Buyer shall take, or use its reasonable best efforts to cause to be taken, all actions and do, or use its reasonable best efforts to cause to be done, all things necessary to obtain the Equity Financing on or prior to the Closing Date on the terms and conditions set forth in the Equity Commitment, including: (i) maintaining in effect and enforcing the Equity Commitment and complying with its obligations thereunder; provided, that the Equity Commitment may be amended, supplemented, modified and replaced as permitted pursuant to this Section 7.7; (ii) participation by senior management of Buyer in, and assistance with, the preparation of rating agency presentations and meetings with rating agencies; (iii) satisfying on a timely basis all conditions to the Equity Financing (including the Equity Financing Conditions) set forth in the Equity Commitment that are reasonably within Buyer's control; and (iv) negotiating, executing and delivering Equity Financing Documents that reflect the terms contained in the Equity Commitment (including any "market flex" provisions related thereto). Without limiting Buyer's other obligations under this Section 7.7, if a Financing Failure Event occurs, Buyer shall (x) promptly notify (which shall in no event be more than three (3) Business Days following the date on which Buyer becomes aware of the occurrence thereof) Parent of such Financing Failure Event of which Buyer becomes aware and the reasons therefor, (y) in consultation with Parent, use its reasonable best efforts to obtain alternative financing from alternative Financing Sources on terms (including relating to certainty of funding) not materially less favorable to Buyer, with lenders reasonably satisfactory to Buyer, in an amount sufficient, when added to the available cash of Buyer and any portion of the Financing that is available, to consummate the transactions contemplated by this Agreement, as promptly as practicable following the occurrence of such event (such financing, an "Alternative Financing"), and (z) obtain, and when obtained, provide Parent with a copy of, a new financing commitment that provides for such Alternative Financing. Buyer shall not, without Parent's prior written consent, agree to any amendment or modification to, or any waiver of any provision or remedy under, the Equity Commitment or any Equity Financing Document unless the terms and conditions thereof, as so amended, modified or waived, are in the aggregate at least as favorable to Parent and Buyer as those contained therein prior to giving effect to such amendment, modification or waiver; provided, that Buyer may, without Parent's prior written consent, enter into any amendment, replacement, supplement or other modification to or waiver of any provision of the Equity Commitment or any Equity Financing Document that would not reasonably be expected to prevent, materially delay or materially impede the timely consummation of the Equity Financing or the transactions contemplated by this Agreement.

(b) Notwithstanding any other provision in this Agreement, Buyer shall have the right to substitute the proceeds of consummated equity or equity-linked offerings or debt offerings or other incurrences of debt (including unsecured notes) for all or any portion of the Equity Financing by reducing commitments under the Equity Commitment or any Equity Financing Document; provided, that to the extent any such debt has a scheduled special or mandatory redemption right, such right is not exercisable prior to the earliest of the consummation of the transactions on the Closing Date, the termination of this Agreement or the End Date as applicable (for the avoidance of doubt as it may be extended pursuant to this Agreement). Further, Buyer shall have the right to substitute commitments in respect of other Equity Financing for all or any portion of the Equity Financing from the same and/or alternative bona fide third-party financing sources so long as all conditions precedent to effectiveness of definitive documentation for such Equity Financing have been satisfied and the conditions precedent to funding of such Equity Financing are in the aggregate, in respect of certainty of funding, substantially equivalent to (or no less favorable in any material respect to Parent than) the Equity Financing Conditions (any such Equity Financing which satisfies the foregoing, the "Replacement Financing"; the definitive documentation for any such Replacement Financing, the "Replacement Financing Documents"). The covenants and other restrictions of Buyer and its affiliates contained in this Agreement with respect to the Equity Financing and the Equity Commitment shall apply equally to any Replacement Financing and Replacement Financing Documents.

Section 7.8 **Exclusivity**. Prior to the Closing, Parent shall not, and shall cause its Affiliates and representatives not to, directly or indirectly, solicit, initiate, knowingly encourage, knowingly facilitate or enter into any negotiation, discussion or Contract, with any other party (other than the Buyer and its Affiliates and representatives) with respect to, or furnish any confidential or non-public information relating to, the Business, the Acquired Assets or the Assumed Liabilities, or afford access to the business, properties, assets, liabilities, books or records of the Business, to such other party, in each case in connection with, the sale of, or other material transaction involving, the Business or the Acquired Assets (an "Acquisition"). Until the earlier of the Closing and such time as this Agreement is terminated in accordance with Article X, Parent shall promptly notify the Buyer if any person makes any proposal, offer, inquiry or contact with respect to any Acquisition and shall, to the extent permitted by any applicable confidentiality agreement, provide Buyer with the terms thereof.

Section 7.9 **Contact with Customers and Suppliers**. Prior to the Closing, to the extent permitted by Requirements of Law, Parent and the Buyer shall reasonably cooperate in communicating with the customers and suppliers of the Business concerning the transactions contemplated hereby, including the Buyer's intentions concerning the operation of the Business following the Closing. Prior to the Closing, the Buyer and its representatives shall contact or communicate with the customers and suppliers of the Business in connection with the transactions contemplated hereby only with the prior written consent of Parent, which shall not be unreasonably withheld or delayed and may be conditioned upon a designee of Parent being present at any meeting or conference. For the avoidance of doubt, nothing in this Section 7.9 shall prohibit the Buyer from contacting the customers and suppliers of the Business in the ordinary course of the Buyer's businesses for the purpose of selling products of the Buyer's businesses or for any other purpose unrelated to the Business or the transactions contemplated by this Agreement.

Section 7.10 **Real Estate Documents**. Prior to the Closing, Parent and Buyer shall work together diligently and in good faith to agree upon the forms of the Ball Ground Lease Assignment, Ball Ground Sublease and REA, in each case consistent with the terms set forth in this Agreement. The cost of recording the REA and preparing the legal description to be attached thereto shall be borne by Parent.

ARTICLE VIII

ADDITIONAL AGREEMENTS

Section 8.1 **Tax Matters**.

(a) Liability for Taxes.

(i) Parent shall be liable for and pay, and pursuant to Article XI (and subject to the limitations thereof), Parent agrees to indemnify and hold harmless each Buyer Group Member from and against, any Losses incurred in connection with, arising out of or resulting from (A) any Taxes of the Acquired Company and any Taxes imposed on the Acquired Assets or with respect to the Business, in each case with respect to any Pre-Closing Tax Period, (B) Taxes of the Sellers (including, without limitation, capital gains Taxes arising as a result of the transactions contemplated by this Agreement) or any of their Affiliates (excluding the Acquired Company) for any Tax period, (C) Taxes for which the Acquired Company (or any predecessor of the Acquired Company) is held liable under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Requirements of Law) by reason of such entity being included in any consolidated, affiliated, combined or unitary group at any time on or before the Closing Date, (D) Taxes imposed on or payable by third parties with respect to which the Acquired Company has an obligation to indemnify such third party pursuant to a transaction consummated on or prior to the Closing, (E) any Transfer Taxes borne by Parent pursuant to Section 8.1(a)(v) and (F) any PRC Capital Gains Taxes (amounts described in the foregoing clauses (A) through (F), "Indemnified Taxes"); provided, however, that Parent shall not be liable for or pay, and shall not indemnify or hold harmless any Buyer Group Member from and against, (1) any Taxes imposed on the Acquired Company or for which the Acquired Company may otherwise be liable as a result of actions taken or caused to be taken by Buyer or any of its Affiliates on the Closing Date after the Closing that are outside of the ordinary course of business and not otherwise contemplated by this Agreement (which, for the avoidance of doubt, shall exclude any Transfer Taxes and any PRC Capital Gains Taxes) and (2) any Transfer Taxes borne by Buyer pursuant to Section 8.1(a)(v) (Taxes described in the foregoing clauses (1) and (2), "Excluded Taxes").

(ii) Parent shall be entitled to any refund of (or credit for) Taxes of the Acquired Company or, with respect to the Acquired Assets or the Business, any Asset Seller allocable to any Pre-Closing Tax Period, except to the extent such refund or credit was included as an asset in the calculation of Closing Date Working Capital or to the extent that Buyer otherwise has borne the economic burden of such Taxes. Upon the request of Parent, and at Parent's sole expense, Buyer shall, and shall cause the Acquired Company and its Affiliates to, take all actions reasonably requested by Parent to timely claim any refunds to which Parent or any Seller is entitled pursuant to the preceding sentence, including filing (or causing to be filed) all Tax Returns (including amended Tax Returns) or other documents claiming any such refunds. The amount due to Parent shall be payable ten (10) days after receipt of any such refund from the applicable Tax Authority (or, if the refund is in the form of credit or offset, ten (10) days after the due date of the Tax Return claiming such credit or offset).

(iii) For any Straddle Period, the portion of any Tax that is allocable to the Pre-Closing Tax Period shall be (x) in the case of Property Taxes and other similar Taxes imposed on a periodic basis, the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period; provided, however, if as a result of the transactions contemplated by this Agreement, the value of any asset is reassessed for purposes of determining the amount of any property or other Tax, any resulting increase in Tax for such Straddle Period shall be treated as being solely with respect to the portion of the Straddle Period beginning on the date after the Closing Date; and (y) in the case of all other Taxes (including income Taxes, sales Taxes, employment Taxes and withholding Taxes), determined as if the Acquired Company filed a separate Tax Return with respect to such Taxes for the portion of the Straddle Period ending as of the end of the day on the Closing Date using a "closing of the books methodology." For purposes of applying the foregoing, (A) any item determined on an annual or periodic basis (including amortization and depreciation deductions) for income Tax purposes shall be allocated to the portion of the Straddle Period ending on the Closing Date based on the relative number of days in such portion of the Straddle Period as compared to the number of days in the entire Straddle Period and (B) any item of deduction attributable to any Transaction Expenses of the Acquired Company shall be allocated to the portion of the applicable Straddle Period of the Acquired Company ending on the Closing Date.

(iv) With respect to any Property Taxes in a Straddle Period levied with respect to the Acquired Assets or the Business, Parent shall be responsible for such Property Taxes attributable to the Pre-Closing Tax Period and Buyer shall be responsible for such Property Taxes attributable to the Post-Closing Tax Period. Upon receipt of any bill for such Property Taxes, Buyer or Parent, as applicable, shall present a statement to the other setting forth the amount of reimbursement to which each is entitled under this Section 8.1(a)(iv) together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the party owing it to the other within ten (10) days after delivery of such statement. In the event that Buyer or Parent makes any payment for which it is entitled to reimbursement under this Section 8.1(a)(iv), the applicable party shall make such reimbursement promptly but in no event later than ten (10) days after the presentation of a statement setting forth the amount of reimbursement to which the presenting party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. Notwithstanding the foregoing, any Property Taxes of the Acquired Company shall be governed by Section 8.1(b) rather than this Section 8.1(a)(iv).

(v) Notwithstanding anything herein to the contrary, fifty percent (50%) of all transfer, documentary, sales, use, stamp, registration, deed and other such Taxes incurred in connection with this Agreement (including any real property transfer Tax and any other similar Tax, but excluding any PRC Capital Gains Taxes) (collectively, "Transfer Taxes") shall be borne by Parent and fifty percent (50%) of all Transfer Taxes shall be borne by Buyer. The party responsible under Requirements of Law for filing any necessary Tax Returns and other documentation with respect to such Transfer Taxes will be responsible for filing such Tax Returns and other documentation. With respect to Taxes described in this Section 8.1(a)(v), the parties shall reasonably cooperate with each other in preparing and filing any such Tax Returns as may be necessary.

(b) Tax Returns of the Acquired Company.

(i) Parent, at its sole expense, shall timely file or cause to be timely filed when due (taking into account all extensions properly obtained) all income Tax Returns that are required to be filed by or with respect to the Acquired Company for taxable years or periods ending on or before the Completion Date for SAMR Registration and all other non-income Tax Returns of the Acquired Company that are due on or before the Completion Date for SAMR Registration. With respect to any such Tax Return to be filed by Parent after the Closing Date, not less than ten (10) days prior to the due date for such Tax Return, taking into account extensions (or, if such due date is within twenty (20) days following the Closing Date, as promptly as practicable following the Closing Date), Parent shall provide Buyer with a draft copy of such Tax Return for its approval (which approval shall not be unreasonably withheld, conditioned or delayed) and Parent shall consider in good faith any reasonable comments made by Buyer in the Tax Return actually filed. Parent shall timely remit or cause to be remitted any Taxes due in respect of such Tax Returns; provided such Taxes are Indemnified Taxes for which Parent is responsible and not Excluded Taxes. With respect to any Tax Return of the Acquired Company relating to a taxable year or period ending after the Closing Date that is filed by Parent pursuant to this Section 8.1(b)(i), Buyer shall pay to Parent the amount of such Taxes allocable to the Post-Closing Tax Period. Buyer shall make such payment at least two (2) Business Days before payment of Taxes (including estimated Taxes) is due to the applicable Tax Authority. Buyer, at its sole cost and expense, shall timely file or cause to be timely filed when due (taking into account all extensions properly obtained) all other Tax Returns that are required to be filed by or with respect to the Acquired Company after the Completion Date for SAMR Registration and Buyer shall remit or cause to be remitted any Taxes due in respect of such Tax Returns.

(ii) All Tax Returns of the Acquired Company that Buyer is required to file or cause to be filed in accordance with this Section 8.1(b) that relate to any taxable year or period ending on or before the Closing Date or any Straddle Period shall be prepared and filed in a manner consistent with past practice and, on such Tax Returns, no position shall be taken, election made or method adopted that is inconsistent with positions taken, elections made or methods used in preparing and filing similar Tax Returns in prior periods. With respect to any Tax Return of the Acquired Company to be filed by Buyer, not less than ten (10) days prior to the due date for such Tax Return, taking into account extensions (or, if such due date is within twenty (20) days following the Closing Date, as promptly as practicable following the Closing Date), Buyer shall provide Parent with a draft copy of such Tax Return for its approval (which approval shall not be unreasonably withheld) and Buyer shall incorporate any reasonable comments made by Parent in the Tax Return actually filed. With respect to any Tax Return of the Acquired Company relating to a Straddle Period that is filed by Buyer pursuant to this Section 8.1(b)(ii), Parent shall pay to Buyer the amount of such Taxes allocable to the Pre-Closing Tax Period. Parent shall make such payment at least two (2) Business Days before payment of Taxes (including estimated Taxes) is due to the applicable Tax Authority.

(iii) None of Buyer or any Affiliate of Buyer shall (or shall cause or permit the Acquired Company to) (A) file, amend or otherwise modify (or grant an extension of any statute of limitation with respect to) any Tax Return relating in whole or in part to the Acquired Company with respect to any taxable year or period ending on or before the Closing Date (or with respect to any Straddle Period) or (B) enter into or pursue any voluntary disclosure with respect to the Acquired Company without the prior written consent of Parent, which consent shall not be unreasonably withheld.

(c) Contest Provisions.

(i) Buyer and Parent shall promptly notify each other in writing upon receipt by Buyer or Parent, or any of their Affiliates (including the Acquired Company), of notice of any pending or threatened federal, state, local or foreign Tax audits, examinations or assessments ("Tax Contests") which might affect the Tax liabilities for which Parent may be liable pursuant to this Section 8.1. Any failure to so notify the other party of any Tax Contest shall not relieve such other party of any liability with respect to such Tax Contest except to the extent such party was materially prejudiced as a result thereof.

(ii) Parent shall have the right to represent the Acquired Company's interests in any Tax Contest regarding Taxes relating to taxable periods ending on or before the Closing Date, and to employ counsel of its choice at its expense. Buyer shall be entitled to participate at its expense in any such Tax Contest described in the preceding sentence. In the case of a Straddle Period, Parent shall be entitled to participate at its expense in any Tax audit or administrative or court proceeding relating (in whole or in part) to Taxes attributable to the portion of such Straddle Period ending on and including the Closing Date and, with the written consent of Buyer, and at Parent's sole expense, may assume the entire control of such audit or proceeding. Neither Buyer nor Parent, nor any of their respective Affiliates (including the Acquired Company) may settle any Tax claim for any Taxes for which Parent may be liable pursuant to Section 8.1(a) in connection with any Tax Contest without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) Assistance and Cooperation. After the Closing Date, Parent, on the one hand, and Buyer, on the other hand, shall (and shall cause their respective Affiliates to):

(i) assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing in accordance with Section 8.1(b);

(ii) cooperate fully in preparing for any audits of, or disputes with Tax Authorities regarding, any Tax Returns of the Acquired Company;

(iii) make available to the other and to any Tax Authority as reasonably requested all information, records, and documents relating to Tax Returns of the Acquired Company;

(iv) provide timely notice to the other in writing of any pending or threatened Tax audits or assessments of the Acquired Company for taxable periods for which the other may have a liability under this Section 8.1;

(v) furnish the other with copies of all correspondence received from any Tax Authority in connection with any Tax audit or information request with respect to any such taxable period;

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

(vii) timely provide to the other powers of attorney or similar authorizations necessary to carry out the purposes of this Section 8.1.

(e) Buyer and Parent agree to cooperate in good faith to allocate the Purchase Price (together with any other amounts treated as consideration for U.S. federal income (and other applicable) Tax purposes) for U.S. federal (and other applicable) Tax purposes among the Acquired Assets, the assets of the Acquired Company and the covenant not to compete pursuant to Section 8.3 of the Agreement in accordance with the applicable Tax Requirements of Law, including the rules under Section 1060 of the Code and the Treasury Regulations promulgated thereunder (and any similar provision of state or local Requirements of Law). Buyer shall prepare an initial allocation and deliver such allocation to Parent for review and comment within sixty (60) days after the Purchase Price is finally determined pursuant to Article II of this Agreement. Parent shall deliver any comments on the initial allocation within thirty (30) days after receipt from Buyer and the parties will cooperate to resolve any disputes with respect to such comments in good faith. In the event the Purchase Price is subsequently adjusted pursuant to this Agreement, Buyer and Parent shall cooperate in good faith to mutually agree on adjustments to the allocation in accordance with this Section 8.1(e). If the parties agree on such allocation (as finally determined pursuant to this Section 8.1(e), the "Final Allocation"), then except as required by applicable Requirements of Law, Buyer and Parent (i) agree to file all Tax Returns in a manner consistent with the Final Allocation for all Tax purposes, including any forms or reports required to be filed pursuant to Section 1060 of the Code, the Treasury Regulations promulgated thereunder or any applicable provisions of local, state and foreign Requirements of Law, (ii) shall not voluntarily take any action inconsistent therewith upon any audit or examination of any Tax Return or in any other filing or proceeding relating to Taxes, unless required pursuant to a determination as defined in Section 1313(a) of the Code or any similar provision of any foreign, state or local Requirements of Law and (iii) agree to cooperate in the preparation of any such forms and to file such forms in the manner required by applicable Requirements of Law; provided, however, that nothing contained herein shall prevent Buyer or Parent from settling any proposed deficiency or adjustment by any Tax Authority based upon or arising out of the Final Allocation, and neither Buyer nor Parent shall be required to litigate before any court any proposed deficiency or adjustment by any Tax Authority challenging the Final Allocation. Notwithstanding anything herein to the contrary, if the parties cannot resolve any dispute regarding the allocation of the Purchase Price pursuant to this Section 8.1(e) prior to the date that any such Tax Returns, forms or reports are required to be filed, Buyer and Parent shall be permitted to use any allocation such party reasonably believes is consistent with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (and any similar provision of state or local Requirements of Law).

(f) VAT.

(i) Subject to this Section 8.1(f), Parent and Buyer intend that, so far as possible under relevant Requirements of Law, none of the transactions contemplated by this Agreement shall be treated as a supply of goods or services subject to any VAT and all transactions contemplated by this agreement are not chargeable with any VAT on the part of a supplier and are outside the scope of any applicable VAT, and Parent and Buyer agree to use all reasonable efforts to secure that such treatment applies. Accordingly, subject to the provisions outlined below and unless expressly stated, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of VAT in respect of the supply. For avoidance of doubt, references to VAT in this agreement include references to Australian Goods and Services Tax, Japanese Consumption Tax and similar non-U.S. indirect taxes.

(ii) Notwithstanding Section 8.1(f)(i), in so far as is relevant to the Buyer and the Asset Sellers based on applicable VAT law, the Buyer, the Parent and each Asset Seller agree that the sale of the Business is a supply of a going concern (as that term is known for VAT purposes) and is not subject to VAT. Further, Parent warrants to Buyer that (A) each of Chart France and Chart Germany is registered, and will remain registered, for VAT, and (B) Chart Australia is registered, and will remain registered, for Goods and Services Tax. Parent shall cause any applicable Asset Seller to provide the Buyer and the respective Buyer Designee without undue delay after the Closing Date with all reasonable information and documents that the Buyer requests in writing in order to carry out any input-VAT adjustment (if any) pursuant to the applicable Requirements of Law.

(iii) If, prior to the Closing Date, Parent and Buyer agree that VAT is or has become chargeable or payable on any supply in respect of the sale of the Acquired Assets under this Agreement, then the Parent shall or shall cause the applicable Asset Seller to provide to Buyer or the respective Buyer Designee, as the case may be, a properly completed and executed VAT invoice (or other valid and customary VAT documentation) with respect to the relevant supply, promptly and in accordance with applicable Requirements of Law. If Parent and Buyer agree that the Parent or the applicable Asset Seller is required to pay or account for such VAT to the relevant taxing authority, Buyer or the respective Buyer Designee shall pay to the Parent or the applicable Asset Seller an additional amount equal to the VAT payable in respect of the supply as shown on such VAT invoice or other valid documentation (in addition to the Purchase Price payable on the Closing Date). If Parent and Buyer cannot agree on whether VAT is or has become chargeable or payable on any supply in respect of the sale of the Acquired Assets under this Agreement or who is required to pay or account for such VAT, the Parent and Buyer shall seek the opinion of a mutually acceptable counsel who is qualified to opine on such matter and shall act in accordance with such counsel's opinion ("Counsel's Opinion") and the costs of such counsel shall be shared equally by Parent and Buyer. For the avoidance of doubt, any such VAT shall only be charged at the prevailing rate and in accordance with applicable Requirements of Law. If Parent and Buyer have agreed to treat any supply in respect of the sale of the Acquired Assets under this Agreement as a supply of a going concern (as that term is known for VAT purposes) and as not subject to VAT as of Closing (including, for the avoidance of doubt, if such treatment is based on a Counsel's Opinion) and after the Closing Date a relevant taxing authority issues an assessment or similar ruling indicating that such treatment was incorrect and that VAT was payable in respect of the applicable transactions (or that VAT in an amount higher than that paid by such party pursuant to this Section 8.1 was payable with respect to the applicable transactions), then the Parent shall or shall cause the applicable Asset Seller to provide to Buyer or the respective Buyer Designee, as the case may be, a properly completed and executed VAT invoice (or other valid and customary VAT documentation) with respect to the relevant supply, promptly and in accordance with applicable Requirements of Law and the assessment or ruling of the taxing authority, and, if the Parent or the applicable Asset Seller is required to pay or account for such VAT to the relevant taxing authority, Buyer or the respective Buyer Designee shall pay to the Parent or the applicable Asset Seller an additional amount equal to the VAT payable in respect of the supply as shown on such VAT invoice or other valid documentation (in addition to the Purchase Price payable on the Closing Date).

(iv) If Buyer or the respective Buyer Designee, as the case may be, after using its reasonable best efforts, is unable to recover under applicable Requirements of Law any amount of VAT (A) paid to Parent or any Asset Seller pursuant to Section 8.1(f)(iii) or (B) payable or accountable by the Buyer or the respective Buyer Designee, as the case may be, to the relevant taxing authority in respect of the sale of the Acquired Assets under this Agreement, Buyer shall notify the Parent and Parent or the applicable Asset Seller and Parent shall or shall cause the applicable Asset Seller to (X) pay to Buyer or the respective Buyer Designee 50% of the amount of such VAT that is not recoverable under applicable Requirements of Law and (Y), if required under Requirements of Law, provide to Buyer or the respective Buyer Designee, as the case may be, a properly revised and executed VAT invoice (or other valid and customary VAT documentation), in each case no later than ten (10) calendar days after receipt of such notice. If Parent and Buyer cannot agree on whether any amount of VAT is not recoverable under applicable Requirements of Law, Parent and Buyer shall seek the opinion of a mutually acceptable counsel who is qualified to opine on such matter and shall act in accordance with such counsel's opinion and the costs of such counsel shall be shared equally by Parent and Buyer.

(v) If any party pays any VAT pursuant to this Section 8.1 and after the Closing Date a relevant taxing authority an assessment or similar ruling indicating that such VAT was not payable in respect of the applicable transactions (or that VAT in an amount less than that paid by such party pursuant to this Section 8.1 was payable with respect to the applicable transactions), any other party that receives a refund of such amount shall promptly (but in any case within ten (10) calendar days) remit such refund to the party that paid such amount pursuant to this Section 8.1.

(vi) Parent and Buyer shall cooperate in good faith and use their reasonable best efforts to secure any available exemptions from, or reductions to, any VAT under applicable Requirements of Law. No party shall, without the prior written consent of the other party, exercise any option or right that may be available to it under applicable Requirements of Law to voluntarily qualify any of the transactions contemplated by this Agreement as a taxable transaction for VAT purposes or otherwise subject to any VAT. Each party agrees to provide the other party, upon such other party's request, information relating to the computation of any VAT described in this Section 8.1(f).

(vii) All references to Parent and the Buyer in this Section 8.1(f) shall include their respective applicable Affiliates.

(g) Deferred Interim Period. During the period between the Closing and the Completion Date for SAMR Filing, except as required by applicable Requirements of Law or with the express prior written approval of Buyer (which Buyer agrees shall not be unreasonably withheld, conditioned or delayed), Parent shall not, with respect to the Acquired Company, (i) make, change or revoke any Tax election, (ii) adopt or change any accounting method with respect to Taxes, (iii) file any amended Tax Return, (iv) enter into any closing agreement, (v) settle or compromise any Tax claim or assessment or (vi) consent to any extension or waiver of the limitation period applicable to any claim or assessment with respect to Taxes.

Section 8.2 Employee Matters.

(a) Parent shall, not later than twenty (20) days prior to the Closing Date, provide Buyer with an update to Schedule 5.16(c). Not later than fifteen (15) days prior to the Closing Date (and subject to the satisfaction of Buyer's standard employment onboarding processes and requirements), Buyer shall or shall cause an Affiliate of Buyer (including a Buyer's Designee) to make an offer of employment to each Business Employee (other than a UK Business Employee) who is employed by an Asset Seller or another Subsidiary of Parent (other than the Acquired Company) (including each such Business Employee who is not actively at work on account of illness, disability or leave of absence (each, an "Inactive Employee")) as of the date of such offer (each, a "Transferring Employee"). The parties acknowledge the applicability of TUPE to the transactions contemplated by this Agreement and that therefore the contracts of employment of the UK Business Employees (other than terms relating to any occupational pension plan) shall have effect from the Closing Date as if originally made between Buyer or its relevant Affiliate. The parties shall comply with, and cause their Affiliates to comply with, TUPE. UK Business Employees who transfer under TUPE shall also be Transferring Employees. Schedule 8.2(a) lists, as of the date of this Agreement, all Transferring Employees, including their name, job, title, annual salary, and the name of their employer. Such offers of employment shall be effective as of, and contingent upon, the Closing or, for any Inactive Employee, on the date on which such Inactive Employee returns to work after the Closing (provided that for any Inactive Employee, the offer shall expire if the date on which such Inactive Employee returns to work is more than one hundred and eighty (180) days following the Closing) (the "Transfer Date") and shall be consistent with the requirements of this Section 8.2. Such offers of employment for each such Transferring Employee will supersede any prior agreements regarding the Transferring Employees' terms and conditions of employment as in effect prior to the Closing. Transferring Employees (i) who accept such offer of employment from, and commence employment on the Closing (or, for any Inactive Employee, on his or her Transfer Date), with Buyer or any of its Affiliates or (ii) whose employment transfers to Buyer or an Affiliate thereof (including Buyer's Designee) as a matter of law, together with all of the employees of the Acquired Company as of the Closing (including each Acquired Company employee who is not actively at work on account of illness, disability or leave of absence), shall collectively be referred to as the "Affected Employees." Parent shall, or shall cause its Affiliates to, terminate the employment of each Transferring Employee who accepts an offer of employment as described in this Section 8.2(a) as of the Closing Date or Transfer Date (as applicable). The parties hereto intend that the transactions contemplated by this Section 8.2(a) shall not result in a termination of employment of any Affected Employee or otherwise trigger severance, termination or similar payments or benefits or any workforce notification or termination requirements, and that the Affected Employees shall have continuous and uninterrupted employment through the Closing. Notwithstanding the foregoing, in the event that any Business Employee becomes eligible for any such payments or benefits, Parent shall be solely responsible for such severance, termination or similar payments or benefits with respect to such Business Employees (except, for the avoidance of doubt, with respect to any Assumed PTO).

(b) For a period commencing on the Closing Date and ending no earlier than the twelve (12) month anniversary of the Closing Date, Buyer shall and shall cause its Affiliates to provide each Affected Employee with base wages or an annual base salary and a cash bonus opportunity (excluding, for clarity, any equity or equity-based bonus opportunity) that are no less favorable to such Affected Employee than the base wages or annual base salary and cash bonus opportunity (excluding, for clarity, any equity or equity-based bonus opportunity) applicable to such Affected Employee immediately prior to the Closing.

(c) For a period commencing on the Closing Date and ending no earlier than the twelve (12) month anniversary of the Closing Date, Buyer shall and shall cause its Affiliates to provide each Affected Employee with employee benefits (excluding equity compensation, equity-based bonus opportunities, change in control or retention payments or benefits) that are no less favorable, in the aggregate, to such Affected Employee as those provided to such Affected Employee as of the Closing Date; provided, however, that, with respect to any Affected Employee whose employment is terminated by Buyer or any of its Affiliates on or prior to the twelve (12) month anniversary of the Closing Date, Buyer or its Affiliates shall provide such Affected Employee with severance benefits that are no less favorable than those severance benefits available to such Affected Employee under the Plans as of immediately prior to the Closing.

(d) Buyer shall and shall cause its Affiliates to credit each Affected Employee with all service credited to such Affected Employee by Parent, Sellers or their Affiliates as of the Closing Date in addition to service earned with Buyer or its Affiliates after the Closing Date for purposes of eligibility, vesting and levels of benefits (such as the amount of any vacation, sick days, severance, layoff and similar benefits) (but not for purposes of benefit accruals under any defined benefit pension plan) under Buyer's and its Affiliates' plans and programs providing employee benefits to the Affected Employees following the Closing (collectively, "Buyer's Benefit Programs"). Buyer shall or shall cause its Affiliates to use commercially reasonable efforts to waive any pre-existing condition exclusions, evidence of insurability requirements, actively at work requirements or waiting periods for participation and coverage applicable under Buyer's Benefit Programs providing medical, dental, hospital, pharmaceutical or vision benefits with respect to Affected Employees and their dependents (except to the extent such exclusions, requirements or waiting periods applied to the Affected Employees or such dependents under the applicable Plan prior to the Closing). Buyer shall or shall cause its Affiliates to use commercially reasonable efforts to credit Affected Employees with any amounts paid under a Plan prior to the Closing Date for purposes of satisfying any applicable deductible, coinsurance or out-of-pocket requirements for the plan year that includes the Closing Date as if such amounts had been paid under a corresponding Buyer's Benefit Program providing medical, dental, hospital, pharmaceutical or vision benefits (to the same extent as credit would have been given under the applicable Plan prior to the Closing).

(e) Buyer shall and shall cause its Affiliates to assume, honor and recognize all accrued but unused vacation (including *congés payés*, *RTT* and *jours de repos acquis* or *en cours d'acquisition*) with respect to Affected Employees who are employed by the Acquired Company immediately prior to the Closing. Effective as of the Closing, to the extent consented to by the applicable Affected Employee in writing prior to the Closing (or to the extent otherwise permitted by applicable Requirements of Law), Buyer shall and shall cause its Affiliates to assume, honor and recognize all accrued but unused vacation (including *congés payés*, *RTT* and *jours de repos acquis* or *en cours d'acquisition*) with respect to Affected Employees (other than the Affected Employees covered by the preceding sentence) immediately prior to the Closing (collectively, the "Assumed PTO").

(f) As of the Closing Date, the Acquired Company shall terminate its participation in each Plan that is not a Company Plan, and in no event shall any Affected Employee be entitled to accrue any benefits under such Plans with respect to services rendered or compensation paid on or after the Closing Date. Buyer and the Acquired Company shall retain or assume all rights and obligations under each Company Plan, whether arising prior to, on or after the Closing Date.

(g) Effective as of the Closing (or, if later, the applicable Affected Employee's Transfer Date), Parent shall or shall cause its Affiliates to terminate the participation of the Affected Employees in each Plan that is not a Company Plan or an Assumed Retention Bonus Agreement. As of the Closing Date, all Affected Employees shall cease to contribute to the Chart Industries, Inc. 401(k) Investment and Savings Plan (the "Parent 401(k) Plan"). Effective as of the Closing, Parent shall transfer and assign to Buyer or one of its Affiliates, and Buyer or such Affiliate(s) shall assume, the retention bonus agreements entered into by the Affected Employees and set forth on Schedule 8.2(g) (as so assumed, the "Assumed Retention Bonus Agreements").

(h) As soon as practicable after the Closing Date (and in any event not later than sixty (60) days thereafter), Buyer or its Affiliates shall establish or designate a qualified defined contribution plan (the "Buyer 401(k) Plan"). As soon as practicable after the Closing Date (and in any event not later than sixty (60) days thereafter), each Affected Employee who, as of the Closing Date, is a participant in the Parent 401(k) Plan shall be entitled to a distribution of his or her account balance in accordance with the terms of the Parent 401(k) Plan as in effect from time to time and applicable Requirements of Law, and Buyer shall take any and all action necessary to ensure that the Buyer 401(k) Plan shall accept "direct rollovers" (within the meaning of Section 401(a)(31) of the Code) of such distributions from the Parent 401(k) Plan, including the amount of any unpaid balance of any participant loan made under the Parent 401(k) Plan, if such rollovers are elected by any Affected Employees participating in the Buyer 401(k) Plan after the Closing.

(i) Parent and its Affiliates (other than the Acquired Company) shall be solely responsible for providing continuation coverage to the extent required by Section 4980B of the Code to those individuals who are "M&A qualified beneficiaries" as defined in Treasury Regulations Section 54.4980B-9, Q&A-4(b) with respect to the transactions contemplated by this Agreement.

(j) Parent shall be solely responsible for complying with the WARN Act and any and all obligations under other applicable Requirements of Law requiring notice of plant closings, relocations, mass layoffs, reductions in force or similar actions (and for any failures to so comply), in any case, applicable to the Business Employees as a result of any action by Parent or its Affiliates prior to the Closing Date or following the Closing with respect to any such employee who does not become an Affected Employee for any reason.

(k) The parties have further identified (i) the employees listed in Schedule 8.2(k)(i) as the Business Employees who are employed by Chart Germany and intended to transfer to the Buyer or any of its Affiliates (the employees listed on such updated Schedule the "Transferring German Employees") and (ii) the employees listed in Schedule 8.2(k)(ii) as employees of Chart France pertaining to the Business and intended to transfer to the Buyer or any of its Affiliates (the employees listed on such updated Schedule the "Transferring French Employees"), which lists shall be updated by the Parent between the date hereof and the Closing Date with respect to any such Business Employees leaving the Business in the ordinary course of business. The parties acknowledge that the Transferring German Employees and Transferring French Employees may have a right to object to the transfer of their employment relationship and may therefore not transfer to the Buyer or its Affiliates. The parties therefore agree that the following general principles shall be applied with regard to the envisaged transfer of the Transferring German Employees and the Transferring French Employees:

(i) Promptly after the date hereof, the parties jointly shall notify the Transferring German Employees in writing of the potential transfer of their employment in accordance with the provisions of Section 613a para 5 of the German Civil Code.

(ii) The parties agree to undertake all commercially reasonable actions which may be reasonably required to effect the transfer of all Transferring German Employees and all Transferring French Employees to the Buyer or its Affiliates and to ensure that the Transferring German Employees and the Transferring French Employees do not object but expressly agree to the transfer of their employment relationship to the Buyer or its Affiliates or accept the offer pursuant to Section 8.2(a) above within the statutory objection period of one (1) month after receipt of such notification (and such Transferring German Employees or Transferring French Employees who object to the transfer of their employment relationship to the Buyer or its Affiliates and, as a result, do not have their employment relationships transferred to Buyer or its Affiliates are referred to as the "Objecting Employees").

(iii) Parent will procure to transfer or cause its Affiliates to procure to transfer any assets that are used for the financing of pension obligations of the Transferring German Employees (in particular direct insurances, pension insurances or re-insurances) to the Buyer or its Affiliates with effect as of Closing Date; provided that the relevant insurance company agrees to such transfer. Parent will take all action to safeguard, and will cause its Affiliates to safeguard, that the pensions of the Transferring German Employees and its financing can continue to the same economic conditions as prior to the Closing Date. If the pensions of the Transferring German Employees cannot be continued to the same conditions, Parent and the Buyer will negotiate an economic equivalent solution to continue such pensions and its financing. In case any of the Transferring German Employees object to their transfer, the Buyer will transfer or cause its Affiliates to transfer any assets that are used for the financing of pension obligations of such Objecting Employees back to the Parent or Chart Germany.

(l) Without the prior approval of the Buyer, Parent shall not, and shall cause its Affiliates not to, make any communication which is intended to cause, provoke or encourage (i) a Business Employee to object to the transfer of his or her employment relationship to the Buyer or its Affiliates or to reject his or her offer of employment from Buyer or its Affiliates, as the case may be, and/or (ii) an employee or person other than a Business Employee who transfers to Buyer or its Affiliates automatically by operation of law or who accepts an offer of employment from Buyer or its Affiliates, in either case, pursuant to Section 8.2(a) above, to claim the transfer of his or her employment relationship to the Buyer or its Affiliates.

(m) Buyer shall, or shall cause one of its Affiliates to, pay the Retention Bonuses to the Affected Employees under the Assumed Retention Bonus Agreements, to the extent that such Retention Bonuses become earned and payable to the Affected Employees pursuant to their terms, at such time(s) and subject to such condition(s) as specified in the applicable Assumed Retention Bonus Agreement, subject to any required withholding for applicable Taxes. In the event any such payment is made by Buyer or its Affiliates, Buyer shall provide written notice to Parent of the same, including the amount(s) paid and any applicable employer-side Taxes imposed thereon. Within three (3) Business Days after Parent's receipt of such written notice(s) from Buyer, Parent shall pay to Buyer (or its designated Affiliate) an aggregate amount equal to such Retention Bonus amount(s) paid plus any employer-side Taxes imposed thereon.

(n) Parent and the Buyer will cooperate (and cause their Affiliates to cooperate) reasonably and in good faith with respect to the transfer of Affected Employees as contemplated by this Section 8.2. Parent agrees that it shall consult with the Buyer prior to Parent, Seller, their Affiliates, or the Acquired Company effecting any written communications to Business Employees (or any oral communications to more than five percent (5%) of the total Business Employees) relating to post-Closing employment matters, and that Buyer shall have the right to review and comment on any such written communications (and, for clarity, Parent, Seller, their Affiliates, or the Acquired Company shall not issue any written communications (or any oral communications to more than five percent (5%) of the total Business Employees) to any Business Employees relating to post-Closing employment matters the substance of which has not been mutually agreed upon by the parties).

(o) The provisions of this Section 8.2 are solely for the benefit of the parties to this Agreement. Notwithstanding anything set forth herein to the contrary, (i) nothing in this Agreement shall constitute or be deemed to constitute an amendment or modification of any plans or arrangements or to create any rights or obligations in any Person (including any Service Provider) except between the parties to this Agreement, (ii) no Affected Employee or other current or former employee, contractor, director or manager of the Acquired Company or its Affiliates (including Parent and Sellers), including any beneficiary or dependent thereof, or any other person not a party to this Agreement, shall be entitled to assert any claim hereunder, and (iii) nothing in this Agreement shall create any obligation on the part of Buyer or any of its Affiliates to continue the employment of any Affected Employee or other Service Provider with the Acquired Company, Buyer or any of their Affiliates for any definite period following the Closing Date, to adopt or maintain any particular plan, program or arrangement at any time, or prevent Buyer or any of its Affiliates from modifying or terminating any such plan, program or arrangement at any time.

Section 8.3 Non-Competition; Non-Solicitation.

(a) Subject to Section 8.3(b), as a material inducement to Buyer to enter into this Agreement, Parent shall not, and Parent shall cause each of its Affiliates not to, directly or indirectly (whether by itself, through an Affiliate or in partnership or conjunction with, or as a member, owner, consultant or agent of, any other Person):

(i) for a period of three (3) years following the Closing Date, undertake, participate in or carry on or be engaged in, or in any other manner advise or assist, or have an interest in, any other Person in connection with the operation of, any Competing Business Activities anywhere in the world in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; and

(ii) for a period of two (2) years following the Closing Date, solicit, entice, encourage or influence, or attempt to solicit, entice, encourage or influence, any Business Employee to resign or otherwise leave the employ of Buyer or its Affiliates or otherwise hire, employ, engage or contract with any Business Employee to perform services other than for the benefit of Buyer or its Affiliates.

(b) Notwithstanding Section 8.3(a), Parent and its Affiliates shall not be prohibited from or restricted in any way with respect to: (i) advertising job openings by use of third party recruiters, newspapers, magazines, the internet, social media and other media, so long as such efforts are not specifically directed at individual Business Employees, or hiring any such Business Employees as a result thereof; (ii) hiring or soliciting any Business Employee who has terminated employment with Buyer or any Affiliate thereof at least three (3) months prior to the date of first contact by Parent or its Affiliates with such Business Employee, or whose employment has been terminated by Buyer or any Affiliate thereof, so long as, in each case, there was no solicitation in violation of Section 8.3(a)(ii) by Parent or its Subsidiaries prior thereto; (iii) continuing to engage in any business (other than the Business) that Parent or any of its Affiliates engages in as of the date of this Agreement; (iv) holding, directly or indirectly, solely as an investment, not more than one percent (1%) of the outstanding voting securities of any company traded on any national securities exchange that is primarily engaged in Competing Business Activities; or (v) acquiring, and following such acquisition, actively engaging in any business that has a Subsidiary, division, group, franchise or segment that is engaged in any Competing Business Activity, so long as for the most recent fiscal year ending prior to the date of such acquisition, the revenues derived from the Competing Business Activities were less than ten percent (10%) of the total consolidated revenues of such business.

(c) Parent acknowledges that a violation of this Section 8.3 may cause Buyer and its Affiliates irreparable harm which may not be adequately compensated for by money damages. Parent therefore agrees that in the event of any actual or threatened violation of this Section 8.3, Buyer shall be entitled, in addition to other remedies that it may have, to seek a temporary restraining order and to seek preliminary and final injunctive relief against Parent or any Subsidiary of Parent to prevent any violations of this Section 8.3, without the necessity of posting a bond.

(d) Parent acknowledges that the restrictions contained in this Section 8.3 are reasonable and necessary to protect the legitimate interests of the Buyer and constitute a material inducement to the Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 8.3 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Requirements of Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Requirements of Law. The covenants contained in this Section 8.3 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 8.4 Insurance Matters.

(a) Except as provided in Section 8.4(b), neither Buyer nor any of its Affiliates (including the Acquired Company) shall have any right to make claims after the Closing Date under the Parent Insurance Policies, whether the incident giving rise to any such claim occurs prior to, on or after the Closing Date. Following the Closing, the insurance requirements of Buyer, the Acquired Company and their respective Affiliates shall be the sole responsibility of Buyer, the Acquired Company and such Affiliates.

(b) Subject to Section 8.4(a), from and after the Closing Date, Parent agrees that, for a period of six (6) years after the Closing, Parent shall use its reasonable best efforts to provide the Buyer with access to Parent Insurance Policies and shall reasonably cooperate with the Buyer, and use reasonable best efforts to assist the Buyer in submitting claims (including by assisting Buyer to determine that applicable claim reporting and other applicable material Parent Insurance Policy requirements are met) with respect to any acts, omissions, events or circumstances relating to the Business, the Acquired Company, the Acquired Assets or the Assumed Liabilities that occurred or existed prior to the Closing and that are covered by such Parent Insurance Policies (such events or circumstances, a "Pre-Closing Insurance Matter"). Parent further agrees that, from and after the Closing Date, with respect to Pre-Closing Insurance Matters, Parent shall (or shall cause its Affiliates to) promptly (and in any event, within 10 Business Days) make claims under such Parent Insurance Policies on behalf of the Buyer, subject to all of the terms and conditions of such Parent Insurance Policies and this Agreement; provided, however, that Buyer shall (i) promptly notify Parent in writing of all such claims, (ii) subject to Article XI, bear a pro rata allocation of the amount of any deductibles or self-insured retentions incurred in connection with such claims under the Parent Insurance Policies based on the aggregate amount of the claims asserted by Parent and/or its Affiliates (other than the Acquired Company), on the one hand, and the Acquired Company, on the other hand, under each applicable Parent Insurance Policy and (iii) subject to Article XI, be responsible for and shall pay to Parent (or any Affiliate designated by Parent) all reasonable out-of-pocket expenses (including fees and expenses of third parties attributable to the handling of such claims) relating to services for claims administration, investigation, appraisals and claim review incurred by Parent or any of its Affiliates on or after the Closing Date with respect to any such claims. Parent shall, and shall cause its applicable Affiliates to, (a) upon the written request of Buyer, add Buyer or its Affiliates as additional insureds, pursuant to ISO form CG 20 10 (04/13) and CG 20 37 (04/13) or their equivalent, under Parent's General and Products Liability policy for Third Person Claims made with respect to circumstances, facts or events actually occurring or actually existing prior to the Closing, (b) promptly (and in any event, within 10 Business Days) provide Buyer with written notice of any changes to the scope, availability, amount of coverage or other material terms under any Parent Insurance Policies, plans, programs or arrangements contemplated by this Section 8.4 and (c) promptly (and in any event, within 10 Business Days) provide Buyer with true and correct copies of the then-current Parent Insurance Policies upon Buyer's written request.

(c) For the avoidance of doubt, neither Parent nor any of its Affiliates makes any representation, warranty or covenant regarding the scope, availability or amount of coverage following the Closing under any Parent Insurance Policies, plans, programs or arrangements contemplated by this Section 8.4, and shall not have any responsibility, and shall not be held liable, for the actions of the insurers under the Parent Insurance Policies regarding claims submitted by Parent or Affiliates on behalf of the Acquired Company. For the avoidance of doubt, this Section 8.4 shall not be construed to limit any rights of Buyer under Article XI.

Section 8.5 Retained Names and Marks.

(a) Buyer agrees and acknowledges that, except as set forth in Section 8.5(b), nothing herein grants Buyer or its Affiliates any rights in any registered or unregistered trademarks, service marks, certification marks, logos and trade dress incorporating the word "Chart", including, for the avoidance of doubt, any of the words, marks, corporate symbols, acronyms or logos listed on Schedule 8.5(a) or any derivation thereof (collectively the "Chart Marks"). Except as set forth in Section 8.5(b), Buyer shall not, and shall cause its Affiliates not to, use the Chart Marks in connection with the Business or for any other purpose following the Closing.

(b) Effective as of the Closing and until the nine (9) month anniversary of the Closing Date (the "Marks Transition Period"), Parent hereby grants to Buyer and its Affiliates a limited, worldwide, non-exclusive, non-transferrable, royalty-free license to use the Chart Marks solely as necessary in connection with the Business, including on websites and materials such as signs, purchase orders, invoices, sales orders, labels, letterheads, shipping documents, business cards and product packaging. Promptly following the Closing (and in any event prior to the expiration of the Marks Transition Period), Buyer shall and shall cause each of its Affiliates (including the Acquired Company), as applicable, (i) to make all filings with any Governmental Body and take all other actions to eliminate the use of any Chart Marks from its corporate name, registered names, fictitious or doing-business-as names or other similar applications and (ii) to effect the elimination of any use of the Chart Marks in the Business, including by removing the Chart Marks from their respective signage, stationary, purchase orders, invoices, labels, packaging, business cards, equipment, machinery and advertising materials; provided, however, that with respect to paper goods and other similar inventory items, Buyer and its Affiliates shall be permitted to (including with respect to the Acquired Company) use any such amounts of materials existing at the Closing until they are depleted.

(c) Notwithstanding the foregoing, subject to Section 12.3, Buyer and its Affiliates shall be permitted to communicate to third parties that they have purchased the Business from Parent and Sellers and reference such names in such communications (including with reference to Parent or Sellers).

Section 8.6 **Covenant Not to Sue**. With regard to the patents set forth on Schedule 8.6 (the "Specified Patents") that are Acquired Assets, Buyer, on behalf of itself, its Affiliates and its and their respective successors and assigns, covenants never to, and to cause its Affiliates and its and their respective successors and assigns never to, sue or otherwise institute or participate in any Proceeding, at law or in equity, against Parent, any of its current or future Affiliates, its and their respective successors and assigns or any of its or their respective customers, manufacturers, distributors or other agents or contractors, by reason of Parent's or its Affiliates' practice or use of the Specified Patents (including making, having made, importing, using, offering for sale, selling, sublicensing, distributing and otherwise commercially exploiting any product or service) for any purpose other than Competing Business Activities or any of such customers', manufacturers', distributors' or other contractors' practice or use of the Specified Patents in connection therewith. Nothing in this Section 8.6 grants any rights to Parent or its Affiliates to enforce the Specified Patents against third parties or claim any rights of priority under the Specified Patents; provided, however, that Buyer agrees to use its commercially reasonable efforts to enforce the Specified Patents at the written request of Parent (and in each case, at Parent's sole cost and expense) to protect against infringement or threatened infringement by third parties and, in the event that Buyer does not begin to use such commercially reasonable efforts within thirty (30) days of receiving such written request, Parent is granted the right to take steps necessary to enforce the Specified Patents and Buyer agrees to reasonably cooperate with Parent with respect thereto.

Section 8.7 **Collection of Receivables**. Buyer shall have the right and authority, from and after the Closing, to collect for its own account all Receivables of the Business included in the Acquired Assets (the "Closing Receivables") and to endorse with the name of the applicable Parent Group Member on any checks or drafts received with respect to any Closing Receivables. From and after the Closing, Parent and its Affiliates shall (i) deliver to Buyer such documentation of, and information relating to, the Closing Receivables as Buyer shall reasonably request and (ii) promptly deliver to Buyer any cash or other property received by Parent and its Affiliates in respect of any Receivables to be transferred pursuant to Section 2.2(a) and Buyer shall reimburse Parent for its reasonable and documented out-of-pocket expenses incurred in connection therewith. From and after the Closing Date, Buyer promptly shall deliver or cause to be delivered to Parent any proceeds received directly or indirectly by Buyer with respect to any Excluded Assets or businesses or assets of Parent and its Affiliates other than the Acquired Assets or the Business, and Parent shall reimburse Buyer for its reasonable and documented out-of-pocket expenses incurred in connection therewith. Each party shall reasonably cooperate with the other party in furtherance of the foregoing.

ARTICLE IX

CONDITIONS PRECEDENT

Section 9.1 **Conditions Precedent to Obligations of Each Party**. The obligation of Buyer and Parent to consummate the transactions contemplated hereby is subject to the satisfaction (or waiver by Buyer and Parent, to the extent permissible under applicable Requirements of Law) on or before the Closing Date of the following conditions:

(a) HSR Act. All applicable waiting periods (and any extensions thereof) under the HSR Act shall have expired or been terminated.

(b) No Restraint. No court or other Governmental Body having jurisdiction over Buyer, Parent or any Seller shall have commenced or threatened in writing to commence a Proceeding, or issued any Order, no Requirement of Law shall have been enacted or promulgated, and no agreement (including any timing agreement) shall have been entered into with a Governmental Body, in each case, which is then in effect and which has or would have the effect of enjoining, preventing, restraining or prohibiting the consummation of the transactions contemplated hereby.

Section 9.2 **Conditions Precedent to Parent's Obligations**. The obligation of Parent to consummate the transactions contemplated hereby is subject to the satisfaction (or waiver by Parent, to the extent permissible under applicable Requirements of Law) on or before the Closing Date of the following conditions:

(a) Representations and Warranties. The representations and warranties contained in Article VI of this Agreement, when read without any exception or qualification for materiality, shall be true and correct, in each case, both when made on the date hereof and on the Closing Date as though made on the Closing Date (except for those representations and warranties made as of a particular date, which shall be true and correct as of such date), except for failures of such representations and warranties to be true and correct which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Performance. The covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed or complied with in all material respects.

(c) Closing Certificate. There shall have been delivered to Parent a certificate dated the Closing Date, signed on behalf of Buyer by a duly authorized officer of Buyer, confirming the satisfaction of the conditions set forth in Sections 9.2(a) and 9.2(b).

(d) Buyer's Closing Deliverables. Buyer shall have delivered to Parent each of the items set forth in Section 3.3.

Section 9.3 Conditions Precedent to Buyer's Obligations. The obligation of Buyer to consummate the transactions contemplated hereby is subject to the satisfaction (or waiver by Buyer, to the extent permissible under applicable Requirements of Law) on or before the Closing Date of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties contained in Articles IV and V of this Agreement, other than the Parent Fundamental Representations, when read without any exception or qualification for materiality or Material Adverse Effect, shall be true and correct, in each case, both when made on the date hereof and on the Closing Date as though made on the Closing Date (except for those representations and warranties made as of a particular date, which shall be true and correct as of such date), except for failures of such representations and warranties to be true and correct which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (ii) the Parent Fundamental Representations, when read without any exception or qualification for materiality or Material Adverse Effect, shall be true and correct, in each case both when made on the date hereof and on the Closing Date as though made on the Closing Date (except for those Parent Fundamental Representations made as of a particular date, which shall be true and correct as of such date), except for (A) changes therein specifically permitted by this Agreement or resulting from any transaction contemplated by this Agreement and (B) any *de minimis* changes.

(b) Performance. The covenants and obligations that Parent is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed or complied with in all material respects.

(c) Closing Certificate. There shall have been delivered to Buyer a certificate dated the Closing Date, signed on behalf of Parent by a duly authorized officer of Parent, confirming the satisfaction of the conditions set forth in Sections 9.3(a) and 9.3(b).

(d) Parent's Closing Deliverables. Parent shall have delivered to Buyer each of the items set forth in Section 3.4.

(e) Material Adverse Effect. From the date of this Agreement through the Closing Date, there shall not have occurred a Material Adverse Effect.

Section 9.4 Frustration of Closing Conditions. Neither Buyer nor Parent may rely on the failure of any condition set forth in this Article IX to be satisfied if such failure was caused by such party's failure to act in good faith or to use its reasonable best efforts to cause the Closing to occur, as required by Section 7.3(b).

ARTICLE X

TERMINATION

Section 10.1 Termination. Notwithstanding anything to the contrary herein, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing solely as follows:

(a) by mutual written consent of Parent and Buyer;

(b) on or after the End Date, by Parent, on the one hand, or Buyer, on the other hand, by written notice to the other party if the Closing has not occurred on or before the date such notice is given; provided, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the primary cause of, or resulted in, the failure of the Closing to occur on or before such date;

(c) by Parent by written notice to Buyer if (i) the condition set forth in Section 9.1(a) shall have become incapable of fulfillment (without regard to the End Date) or (ii) Buyer has breached, or caused the breach of, its representations, warranties, covenants, agreements or other obligations hereunder in a manner that would reasonably be expected to cause the conditions set forth in Section 9.2(a) or Section 9.2(b) not to be satisfied and such breach has not been cured within thirty (30) days following written notification thereof to Buyer by Parent;

(d) by Buyer by written notice to Parent if (i) the condition set forth in Section 9.1(a) shall have become incapable of fulfillment (without regard to the End Date) or (ii) Parent has breached, or caused the breach of, its representations, warranties, covenants, agreements or other obligations hereunder in a manner that would reasonably be expected to cause the conditions set forth in Section 9.3(a) or Section 9.3(b) not to be satisfied and such breach has not been cured within thirty (30) days following written notification thereof to Parent by Buyer; or

(e) by either Parent, on the one hand, or Buyer, on the other hand, by giving written notice to the other if (i) any Governmental Body with competent jurisdiction shall have issued an Order or taken any other action or (ii) any Requirement of Law shall have been enacted or promulgated, in each case of (i) and (ii), permanently restraining, enjoining or otherwise prohibiting the consummation of any of the transactions contemplated by this Agreement, and in the case of such an Order or other action, such Order or other action shall not be subject to appeal or shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 10.1(e) shall not be available to any party whose action or failure to act (including the breach of this Agreement) has resulted in such Order or other action.

Section 10.2 Effect of Termination. In the event this Agreement is terminated pursuant to Section 10.1, all further obligations of the parties hereunder shall terminate and this Agreement shall become null and void and of no further force and effect, except for this Section 10.2 and Article XII, and except that such termination shall not relieve any party of any liability for any breach of this Agreement or fraud prior to such termination.

ARTICLE XI

INDEMNIFICATION

Section 11.1 Indemnification by Parent.

(a) Subject to the limitations set forth in this Article XI, from and after the Closing, Parent agrees to indemnify and hold harmless each Buyer Group Member from and against any and all Losses and Expenses incurred by such Buyer Group Member in connection with or arising from (i) any breach of any warranty or the inaccuracy of any representation contained in Article IV or Article V or any certificate delivered by or on behalf of Parent or any of its Affiliates pursuant to this Agreement (to the extent relating thereto), (ii) any breach by Parent of, or the failure by Parent to perform, any of Parent's covenants or obligations contained in this Agreement, (iii) any Excluded Liabilities or Excluded Assets, (iv) any Transaction Expenses or Indebtedness of the Acquired Company to the extent not paid prior to or at the Closing or pursuant to Section 2.5, (v) any Indemnified Taxes, (vi) the item listed on Schedule 11.1(a)(vi) and (vii) the item listed on Schedule 11.1(a)(vii); provided, however, that Parent shall be required to indemnify and hold harmless Buyer Group Members under clause (i) of this Section 11.1(a) with respect to Losses and Expenses incurred by such Buyer Group Members only to the extent that:

(x) the amount of such Losses and Expenses suffered by Buyer Group Members related to each individual claim or series of related claims exceeds $20,000 (it being understood that (A) such amount shall be a deductible for which Parent shall bear no indemnification responsibility and (B) any claim equal to or less than $20,000 shall be disregarded in the determination of the aggregate amount of Losses and Expenses pursuant to Section 11.1(a)(y), below);

(y) the aggregate amount of such Losses and Expenses exceeds $1,600,000 (it being understood that such amount shall be a deductible for which Parent shall bear no indemnification responsibility); and

(z) the aggregate amount required to be paid by Parent does not exceed $24,000,000;

provided further, however, that the foregoing clauses (x), (y) and (z) shall not apply with respect to Losses and Expenses incurred by Buyer Group Members in respect of (1) any breach or inaccuracy of the representations and warranties set forth in (A) Sections 4.1 (Organization, Power and Authority), 4.2 (Title to Purchased Interests and Acquired Assets), 4.3 (No Brokers), 5.1 (Organization; Capital Structure of the Acquired Company; Power and Authority) and 5.2 (Subsidiaries) (collectively, the "Parent Fundamental Representations") or (B) Section 5.6 (Taxes) or (2) fraud by Parent or any of its Affiliates.

(b) (i) Except with respect to breaches or inaccuracies of the Parent Fundamental Representations or the representations and warranties set forth in Section 5.6 (Taxes), the indemnification provided for in Section 11.1(a)(i) shall terminate upon the eighteen (18) month anniversary of the Closing Date; (ii) the indemnification provided for in Section 11.1(a)(i), with respect to breaches or inaccuracies of the Parent Fundamental Representations only, shall terminate upon the five (5) year anniversary of the Closing Date; (iii) the indemnification provided for in Section 11.1(a)(i), with respect to breaches or inaccuracies of Section 5.6 (Taxes) only, shall terminate sixty (60) days after the expiration of the statute of limitations period applicable to the matters covered thereby; (iv) the indemnification provided for in Section 11.1(a)(vii) shall terminate upon the five (5) year anniversary of the Closing Date; and (v) the indemnification provided for in Section 11.1(a)(ii) shall terminate (x) with respect to the covenants set forth in Article VII, at the Closing and (y) with respect to all other covenants contained herein, in accordance with the expiration of the terms of the covenants covered thereby or, if no term is expressly stated, upon the expiration of the statute of limitations period applicable to the matters covered thereby; and, in each case, no claims shall be made by any Buyer Group Member under Section 11.1(a) thereafter, except that the indemnification by Parent shall continue as to any Losses or Expenses with respect to which any Buyer Group Member has validly given a Claim Notice to Parent in accordance with the requirements of Section 11.3 on or prior to the date such indemnification would otherwise terminate in accordance with this Section 11.1(b), as to which the obligation of Parent shall continue solely with respect to the specific matters in such Claim Notice until the liability of Parent shall have been determined pursuant to this Article XI, and Parent shall have reimbursed all Buyer Group Members for the full amount of such Losses and Expenses that are payable with respect to such Claim Notice, in accordance with and subject to the limitations set forth in this Article XI.

(c) Notwithstanding anything contained in this Agreement to the contrary, the maximum aggregate liability of Parent pursuant to this Article XI and Article VIII shall not exceed the amount of the net proceeds received by Sellers hereunder (except in the case of fraud by Parent or any of its Affiliates or under Section 11.1(a)(iii)).

(d) Notwithstanding anything contained in this Agreement to the contrary, Parent shall be required to indemnify and hold harmless Buyer Group Members under clause (vii) of Section 11.1(a) with respect to Losses and Expenses incurred by such Buyer Group Members only to the extent that:

(x) the aggregate amount of such Losses and Expenses exceeds $500,000 (it being understood that such amount shall be a deductible for which Parent shall bear no indemnification responsibility); and

(y) the aggregate amount required to be paid by Parent does not exceed $7,500,000.

For the avoidance of doubt, the limitations set forth in this Section 11.1(d) shall not apply to indemnification claims under Section 11.1(a)(i).

Section 11.2 Indemnification by Buyer.

(a) Subject to the limitations set forth in this Article XI, from and after the Closing, Buyer agrees to indemnify and hold harmless each Parent Group Member from and against any and all Losses and Expenses incurred by such Parent Group Member in connection with or arising from (i) any breach of any warranty or the inaccuracy of any representation of Buyer contained in Article VI or any certificate delivered by or on behalf of Buyer pursuant to this Agreement; (ii) any breach by Buyer of, or failure by Buyer to perform, any of its covenants or obligations contained in this Agreement and (iii) any Assumed Liability and Acquired Assets.

(b) (i) The indemnification provided for in Section 11.2(a)(i) shall terminate upon the eighteen (18) month anniversary of the Closing Date and (ii) the indemnification provided for in Section 11.2(a)(ii) shall terminate (x) with respect to the covenants set forth in Article VII, at the Closing and (y) with respect to all other covenants contained herein, in accordance with the expiration of the terms of the covenants covered thereby or, if no term is expressly stated, upon the expiration of the statute of limitations period applicable to the matters covered thereby; and, in each case, no claims shall be made by any Parent Group Member under Section 11.2(a)) thereafter, except that the indemnification by Buyer shall continue as to any Losses or Expenses with respect to which any Parent Group Member has validly given a Claim Notice to Buyer in accordance with the requirements of Section 11.3 on or prior to the date such indemnification would otherwise terminate in accordance with this Section 11.2(b), as to which the obligation of Buyer shall continue solely with respect to the specific matters in such Claim Notice until the liability of Buyer shall have been determined pursuant to this Article XI, and Buyer shall have reimbursed such Parent Group Member for the full amount of such Losses and Expenses that are payable with respect to such Claim Notice, in accordance with and subject to the limitations set forth in this Article XI.

(c) Notwithstanding anything contained in this Agreement to the contrary, the maximum aggregate liability of Buyer pursuant to this Article XI and Article VIII shall not exceed the amount of the net proceeds received by Sellers hereunder (except in the case of fraud by Buyer or any of its Affiliates or under Section 11.2(a)(iii)).

Section 11.3 Claims Procedures.

(a) Subject to Section 11.4 with respect to Third Person Claims and Section 11.5 with respect to Indemnifiable Proceedings, any party hereto seeking indemnification hereunder (the "Indemnified Party") shall deliver to the party obligated to provide indemnification to such Indemnified Party (the "Indemnitor") a notice (a "Claim Notice"), which shall be delivered promptly after the Indemnified Party acquires actual knowledge of the basis for a claim for indemnification hereunder and which shall describe in reasonable detail the facts giving rise to such claim, and shall include in such Claim Notice (if then known) the amount, or the method of computation of the amount, of such claim and a reference to the provision of this Agreement or any other agreement, document or instrument executed hereunder or in connection herewith upon which such claim is based; provided, however, that the failure or delay of the Indemnified Party to provide a Claim Notice promptly to the Indemnitor shall not relieve the Indemnitor of its obligations hereunder except to the extent the Indemnitor shall have been materially prejudiced by such failure.

(b) After the timely delivery of any Claim Notice pursuant to Section 11.3(a), the amount of indemnification to which an Indemnified Party shall be entitled under this Article XI shall be determined (i) by the written agreement between the Indemnified Party and the Indemnitor, (ii) by a final judgment or decree of any court of competent jurisdiction or (iii) by any other means to which the Indemnified Party and the Indemnitor shall agree in writing. The judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined. The Indemnified Party shall have the burden of proof in establishing the amount of Losses and Expenses suffered by it.

Section 11.4 Third Person Claims.

(a) Any party seeking indemnification provided under this Agreement in respect of, arising out of or involving a claim or demand made by any third Person against the Indemnified Party, other than an Indemnifiable Proceeding (a "Third Person Claim"), shall notify the Indemnitor in writing, and in reasonable detail, of the Third Person Claim within ten (10) Business Days (or reasonably more promptly dependent upon the circumstances) after receipt by such Indemnified Party of written notice of the Third Person Claim. Thereafter, the Indemnified Party shall deliver to the Indemnitor, within ten (10) Business Days after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Person Claim. Any notice of a claim by reason of any of the representations, warranties or covenants contained in this Agreement shall refer to the provision of this Agreement upon which such claim is based and describe in reasonable detail (to the extent known) the facts giving rise to an alleged basis for the claim and the amount of the liability asserted against the Indemnitor by reason of the Third Person Claim; provided, however, that the failure or delay of the Indemnified Party to give notice to the Indemnitor as provided in this Section 11.4 shall not relieve the Indemnitor of its obligations hereunder except to the extent the Indemnitor shall have been materially prejudiced by such failure.

(b) In the event of the initiation of a Third Person Claim, the Indemnitor shall have the sole and absolute right, subject to this Section 11.4(b), after the receipt of notice, at its option and at its own expense, to be represented by counsel of its choice and to control, defend against, negotiate, settle or otherwise deal with any Proceeding which relates to any Losses and Expenses alleged to be indemnified against hereunder; provided, however, that the Indemnified Party may participate in any such Proceeding with counsel of its choice and at its expense; provided further, however, that the Indemnitor shall not be entitled to assume or continue control of the defense of any Third Person Claim if (i) the Third Person Claim relates to or arises in connection with any criminal Proceeding, (ii) the Third Person Claim seeks, as its primary purpose, an injunction or equitable relief against any Indemnified Party, (iii) the potential Losses and Expenses that the Indemnified Party may suffer as a result of the Third Person Claim is subject to, and (in combination with all other such Losses and Expenses with respect to which indemnification is sought or has otherwise been previously paid) is likely to result in more monetary liability for the Indemnified Party than the Indemnitor (taking into account the amounts available for indemnification pursuant to this Article XI), or (iv) the Third Person Claim is asserted by a customer of the Acquired Company or the Business (other than the Persons set forth on Schedule 11.4(b), in each case so long as none of the foregoing clauses (i), (ii) or (iii) apply with respect to such Third Person Claim) or any Governmental Body. By assuming control over the defense, negotiation and settlement of the Third Person Claim, Indemnitor shall be deemed to have confirmed its obligation to indemnify the Indemnified Party with respect to any Losses and Expenses arising therefrom as relating thereto. The parties hereto agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any Third Person Claim at the Indemnitor's expense. To the extent the Indemnitor elects not to defend such Third Person Claim, or is not entitled to defend such Third Person Claim pursuant to this Section 11.4(b), and the Indemnified Party defends against or otherwise deals therewith, the Indemnified Party may retain counsel at the expense of the Indemnitor, which counsel shall be reasonably acceptable to the Indemnitor, and control the defense of such Proceeding; provided, however, that the Indemnitor shall be obligated pursuant to this Section 11.4 to pay for only one firm of counsel, per applicable jurisdiction, for all Indemnified Parties. Neither the Indemnitor nor the Indemnified Party may settle any such Proceeding which settlement obligates the other party to pay money (including pursuant to this Article XI), to perform obligations (including to refrain from taking any actions) or to admit liability without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed. If the Indemnified Party shall refuse to consent to the settlement of any Third Person Claim, so long as only money damages are involved and there is no admission of liability or wrongdoing with respect to the Indemnified Party, the liability of the Indemnitor in respect of such Third Person Claim shall not exceed the amount for which the Third Person Claim could have been settled plus the amount of expenses incurred by the Indemnified Party prior to the time of and in connection with the proposed settlement to which it is entitled to indemnification.

(c) To the extent of any conflict or overlap between this Article XI and Section 8.1(c) (relating to Tax Contests), the provisions of Section 8.1(c) shall control with respect to Tax Contests.

Section 11.5 Indemnifiable Proceedings.

(a) In the event that any Buyer Group Member receives any notices or documents (including court papers) relating to any Indemnifiable Proceeding, Buyer shall deliver or cause to be delivered copies thereof to Parent as promptly as practicable (and in any event within ten (10) Business Days after the applicable Buyer Group Member's receipt thereof).

(b) Parent (or an Affiliate thereof) shall control, defend against, negotiate, settle and otherwise deal with each Indemnifiable Proceeding with counsel of its own choice and in its sole discretion. Buyer shall and shall cause its Affiliates and their respective personnel to cooperate reasonably with Parent (or such controlling Affiliate) at Parent's sole expense (including Buyer's reasonable attorneys' fees, to the extent attorneys are required) in connection with the defense, negotiation and settlement of any Indemnifiable Proceeding, including by making witnesses, documents, equipment and products (including parts and components) which are the subject of or involved in any such Indemnifiable Proceeding available promptly and as reasonably requested (including for any depositions or other proceedings as required by Requirements of Law or otherwise), and by preserving relevant data, documents, equipment and products (including parts and components). In connection with the cooperation described in this Section 11.5, Buyer and each of its Affiliates, as applicable, shall be deemed to be a consultant of Parent and its Affiliates. Parent shall promptly reimburse Buyer for any out-of-pocket and documented costs and expenses incurred by Buyer or its Affiliates (or their respective personnel) in connection with providing the cooperation described in this Section 11.5.

Section 11.6 Determination of Indemnification Amounts.

(a) Without limiting the effect of any other limitations contained in this Article XI, for purposes of computing the amount of any and all Losses and Expenses recoverable under this Article XI, there shall be deducted (i) an amount equal to the amount of any Tax Benefit realized by the Indemnified Party or any of its Affiliates (in the same year of such Losses and Expenses) in connection with such Losses and Expenses or any of the circumstances giving rise thereto and (ii) an amount equal to the amount of any insurance proceeds, indemnification payments, contribution payments or reimbursements actually received (net of the costs of enforcement, deductibles and retro-premium adjustments) by the Indemnified Party or any of its Affiliates in connection with such Losses or Expenses or any of the circumstances giving rise thereto (it being understood that the Indemnified Party and any of its Affiliates shall use commercially reasonable efforts to obtain such proceeds, payments or reimbursements). The calculation of Losses and Expenses shall not include losses arising because of a change after the Closing in applicable Requirements of Law or accounting principles. For purposes hereof, "Tax Benefit" shall mean any actual refund or credit of Taxes to be paid or reduction in the amount of Taxes which otherwise would be owed in the absence of indemnifiable Losses and Expenses by the Indemnified Party or its Affiliates, as applicable.

(b) Any payment made pursuant to Section 2.6 or this Article XI of this Agreement shall be treated as an adjustment to the Purchase Price for Tax purposes.

(c) In any case where an Indemnified Party recovers from third Persons any amount in respect of a matter with respect to which an Indemnitor has indemnified it pursuant to this Article XI, such Indemnified Party shall promptly pay over to the Indemnitor the amount so recovered (after deducting therefrom the full amount of the reasonable expenses incurred by it in procuring such recovery), but not in excess any amount previously so paid by the Indemnitor to or on behalf of the Indemnified Party in respect of such matter.

(d) Each of the parties hereto agrees to use its commercially reasonable efforts to mitigate their respective Losses and Expenses upon and after becoming aware of any event or condition which could reasonably be expected to give rise to any Losses and Expenses that are indemnifiable hereunder.

(e) The representations, warranties and covenants of the Indemnitor, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its officers, directors, employees, consultants, financial advisors, legal counsel, and accountants) or by reason of the fact that the Indemnified Party or any of its representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Section 9.1, Section 9.2 or Section 9.3, as the case may be.

(f) Subject to Section 11.1(a)(iv), Parent shall not be required to indemnify or hold harmless any Buyer Group Member pursuant to Section 11.1 to the extent the matter in question was taken into account in the computation of the Purchase Price pursuant to Article II (including, for the avoidance of doubt, in respect of Section 5.13(c) to the extent the relevant inventory was taken into account in such computation).

(g) For purposes of determining (i) whether a breach of any representation or warranty exists for purposes of this Article XI, and (ii) the amount of any Losses and Expenses arising from a breach of any representation or warranty for which an Indemnified Party is entitled to indemnification under this Article XI, the terms "material," "Material Adverse Effect", "in all material respects" and words and qualifications of similar import shall be disregarded and given no effect (except as part of the defined terms "Material Contracts", "Material Customer" and "Material Supplier" and except for the reference to a Material Adverse Effect in the first sentence in Section 5.5).

Section 11.7 Exclusive Remedy. Each of Parent, on the one hand, and Buyer, on the other hand, acknowledges and agrees that, from and after the Closing, except in the case of fraud and except for the equitable remedies expressly contemplated in Section 12.14, its sole and exclusive remedy against the other party and its respective Affiliates, including for the Losses and Expenses of any Buyer Group Member or Parent Group Member, as applicable, relating (directly or indirectly) to the subject matter of this Agreement or the transactions contemplated hereby, regardless of whether such claims arise in contract, tort, breach of warranty or any other legal or equitable theory, shall be pursuant to the indemnification provisions set forth in this Article XI and Section 8.1(a). Without limiting the generality of the foregoing, the parties hereto hereby irrevocably waive any right of rescission they may otherwise have or to which they may become entitled. The provisions of this Section 11.7 were specifically bargained for among the parties and were taken into account by the parties in arriving at the Purchase Price and the terms and conditions of this Agreement. Each of the parties hereto have specifically relied upon the provisions of this Section 11.7 in agreeing to the Purchase Price and the terms and conditions of this Agreement.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Further Assurances. Subject to the terms and conditions of this Agreement, each of the parties hereto agrees to use its reasonable best efforts to take or cause to be taken all action, to do or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable under applicable laws and regulations or otherwise to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including the execution and delivery of such instruments, and the taking of such other actions as the other party hereto may reasonably require in order to carry out the intent of this Agreement.

Section 12.2 Confidential Nature of Information.

(a) The parties hereto acknowledge and agree that the Confidentiality Agreement remains in full force and effect in accordance with its terms following the date hereof; provided, however, from and after the Closing, Buyer shall not be subject to any restriction with respect to any information concerning the Acquired Company or Business, except as set forth in this Agreement.

(b) For a period of six (6) years following the Closing, unless Buyer has otherwise consented in writing, Parent and its Affiliates shall treat as confidential, shall not disclose to any other Person and shall safeguard any and all Business Confidential Information with the same degree of care Parent uses to safeguard Parent's confidential information. Buyer and Parent acknowledge that the confidentiality obligations set forth in this Section 12.2(b) shall not extend to information, knowledge and data that is required to be disclosed by Parent to comply with the Requirements of Law (including securities laws) or an Order of a Governmental Body; provided, however, that in the event that any demand or request for disclosure of such information is made, Parent, to the extent reasonable and legally permissible, shall promptly notify Buyer of its intention to make such disclosure and provide a list of the information it intends to disclose (and, if applicable, the text of the disclosure language itself) prior to making such disclosure and shall cooperate reasonably with Buyer, at Buyer's expense, to the extent Buyer may seek to limit such disclosure, including, if requested, taking all reasonable steps to resist or avoid any such Order referred to above. If and to the extent, in the absence of a protective order or the receipt of a waiver from Buyer after a request in writing therefor is made by Parent (such request to be made as soon as reasonably practicable to allow the Buyer a reasonable amount of time to respond thereto), Parent or its representatives or their respective Affiliates are legally required to disclose the Business Confidential Information, Parent will limit such disclosure to that which is legally required and will use reasonable efforts to obtain assurances that confidential treatment will be accorded to Buyer's confidential information that Parent is so required to disclose, and thereafter Parent may disclose such information without liability hereunder. Notwithstanding anything to the contrary herein, Parent, its Affiliates and their respective representatives may use and disclose any Business Confidential Information (i) in connection with the transactions contemplated hereby or any disputes or actions in connection therewith or arising therefrom, (ii) to comply with applicable Requirements of Law, including public filing, legal and other accounting requirements (including pursuant to the rules of NASDAQ) and (iii) to the extent required for Tax reporting or filing purposes, including to the extent required to be incorporated into or consolidated with financial and/or Tax information of Parent or its Affiliates.

Section 12.3 **No Public Announcement**. Neither Buyer nor Parent shall, without the prior written approval of the other (which approval shall not be unreasonably withheld, conditioned or delayed), make or cause to be made (or allow any Affiliate to make or cause to be made) any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that any such party shall be so obligated by applicable Requirements of Law, in which case the other party shall be advised and the parties shall use their reasonable efforts to cause a mutually agreeable release or announcement to be issued.

Section 12.4 **Notices**. All notices or other communications required or permitted hereunder shall be in writing and shall be sent by email, addressed as follows, and shall be deemed given or made on the date of transmittal by email (with no electronic notice of message delivery failure) prior to 5:00 p.m., Eastern Time, on a Business Day, or otherwise, as of the immediately following Business Day:

If to Buyer, to:

Cryoport, Inc.
112 Westwood Place, Suite 350
Brentwood, TN 37027
Attention: (i) Jerrell Shelton, President, Chief Executive Officer, and Chairman of the Board, (ii) Robert Stefanovich, Chief Financial Officer, Treasurer and Corporate Secretary, and (iii) Tony Ippolito, Vice President and General Counsel.
Email: JShelton@cryoport.com; RStefanovich@cryoport.com; and TIppolito@cryoport.com

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

Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626
Attention: Daniel Rees; Cheston Larson
Email: Daniel.Rees@lw.com; Cheston.Larson@lw.com

If to Parent, to:

Chart Industries, Inc.
3055 Torrington Drive
Ball Ground, GA 30107
Attention: (i) Jillian C. Evanko, Chief Executive Officer, and (ii) Herbert G. Hotchkiss, VP, General Counsel and Secretary
Email: jillian.evanko@chartindustries.com; and herbert.hotchkiss@chartindustries.com

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

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601
Attention: Matt Stevens
Email: mstevens@winston.com

or to such other Person or address or email address as such party may indicate by written notice delivered to the other parties hereto.

Section 12.5 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, no party to this Agreement may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other parties to this Agreement, except that each party shall be permitted to assign its rights and delegate its obligations hereunder to an Affiliate of such party; provided that no such assignment or delegation will relieve the assigning party of its obligations hereunder.

Section 12.6 **Access to Records After Closing**. Subject to Section 12.2, for a period of seven (7) years after the Closing Date, the parties will allow each other's accountants, counsel and designated representatives reasonable access to such information of the Business (including the Acquired Company) to the extent that such access may reasonably be required in connection with preparation of tax or financial reporting of the Business (including the Acquired Company), reporting, disclosure, filing or other requirements imposed on the requesting party by any Governmental Authority and to carry out its human resources functions; provided, however, that neither party shall be required to violate any obligation of confidentiality to which it or any of its Affiliates is subject or to waive any privilege which any of them may possess in discharging its obligations pursuant to this Section 12.6; provided further, however, that in any such case, the requested party shall, and shall cause its Affiliates and representatives to, reasonably cooperate with the requesting party at such requesting party's expense to seek an appropriate remedy to permit the access contemplated hereby. Such access shall be afforded upon receipt of reasonable advance notice and during normal business hours; provided, however, that the parties acknowledge and agree that such access shall not interfere unreasonably with the operations of the parties. The requesting party shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 12.6. If either party or any of its Affiliates shall desire to dispose of any of such books and records prior to the expiration of such seven (7)-year period, such party shall, prior to such disposition, give the other party a reasonable opportunity, at such party's expense, to segregate and remove such books and records as such party may select.

Section 12.7 **Entire Agreement; Amendments**. This Agreement, the Exhibits and Schedules referred to herein, the documents delivered pursuant hereto and the Confidentiality Agreement contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all other prior representations, warranties, agreements, understandings or letters of intent between or among any of the parties hereto or their respective Affiliates. This Agreement (including the Exhibits and the Schedules) shall not be amended, modified or supplemented except by a written instrument signed by Buyer and Parent.

Section 12.8 **Interpretation**. Disclosure of any fact or item in any Schedule hereto referenced by a particular section in this Agreement shall be deemed to have been disclosed with respect to every other section in this Agreement and the Schedule related thereto so long as the applicability of such matter to such section or Schedule is readily apparent on the face of such disclosure. Neither the specification of any dollar amount in any representation or warranty contained in this Agreement nor the inclusion of any specific item in any Schedule hereto is intended to imply that such amount, or higher or lower amounts, or the item so included or other items, are or are not material, and no party shall use the fact of the setting forth of any such amount or the inclusion of any such item in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in any Schedule is or is not material for purposes of this Agreement. Unless this Agreement specifically provides otherwise, neither the specification of any item or matter in any representation or warranty contained in this Agreement nor the inclusion of any specific item in any Schedule hereto is intended to imply that such item or matter, or other items or matters, are or are not in the ordinary course of business, and no party shall use the fact of the setting forth or the inclusion of any such item or matter in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in any Schedule is or is not in the ordinary course of business for purposes of this Agreement. The information contained in the Schedules is disclosed solely for the purposes of this Agreement, and no information contained therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever, including of any violation of Requirements of Law or breach of any Contract.

Section 12.9 **Waivers**. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall constitute a continuing waiver or shall be held to constitute a waiver of any other or subsequent breach.

Section 12.10 **Expenses**. Except as expressly set forth herein, each party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and independent public accountants.

Section 12.11 **Partial Invalidity**. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable Requirements of Law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

Section 12.12 **Execution in Counterparts**. This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to Parent and Buyer. The execution of this Agreement and any agreement or instrument entered into in connection with this Agreement, and any amendment hereto or thereto, by any of the parties hereto or thereto may be evidenced by way of a portable document format (.pdf) transmission, or other electronic transmission of, such party's signature, and such portable document format (.pdf) or other electronically transmitted signature shall be deemed to constitute the original signature of such party.

Section 12.13 **Disclaimer of Warranties**. Parent makes no representations or warranties with respect to any projections, forecasts or forward-looking information provided to Buyer (nor, for the avoidance of doubt, does any Seller or the Acquired Company). **EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, PARENT IS SELLING THE BUSINESS, THE ACQUIRED ASSETS, THE ASSUMED LIABILITIES AND THE PURCHASED INTERESTS ON AN "AS IS, WHERE IS" BASIS AND PARENT DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS AND GUARANTIES, WHETHER EXPRESS OR IMPLIED, AND PARENT MAKES NO REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND NO IMPLIED WARRANTIES WHATSOEVER**. Except as specifically referenced herein or in the Schedules, Buyer acknowledges that neither Parent nor any of Parent's representatives or Affiliates or any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any diligence materials heretofore made available by Parent or any of its representatives or Affiliates to Buyer, and neither Parent nor any of Parent's representatives or Affiliates or any other Person will have or be subject to any liability to Buyer, any Affiliate of Buyer or any other Person resulting from the distribution of any such information to, or use of any such information by, Buyer, any Affiliate of Buyer or any of their agents, consultants, accountants, counsel or other representatives. Buyer acknowledges and agrees that it is not entitled to, nor shall it, rely upon any representations or warranties or other statements of fact or opinion, other than the representations and warranties expressly set forth in this Agreement.

Section 12.14 Specific Enforcement. Each of the parties hereto agrees that irreparable damage would occur in the event that any of the provisions of this Agreement to be performed by Buyer or Parent are not performed in accordance with their specific terms or are otherwise breached. Accordingly, prior to any termination of this Agreement pursuant to Section 10.1, Buyer and Parent, as applicable, shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement by the other parties, as applicable, and to enforce specifically the terms and provisions of this Agreement in any federal or state court located in the State of Delaware, this being in addition to any other remedy to which such party is entitled at law or in equity. Buyer and Parent hereby further waive (i) any defense in any Proceeding for specific performance that a remedy at law would be adequate and (ii) any Requirements of Law to post security as a prerequisite to obtaining equitable relief.

Section 12.15 Non-Recourse. Notwithstanding anything to the contrary herein or in any other documents delivered pursuant hereto, (i) this Agreement may only be enforced against, and any Proceeding based upon, arising out of or related to a breach of this Agreement by Parent or Buyer may only be made against, Parent or Buyer, respectively, (ii) none of (x) Parent's Affiliates or Parent's or its Affiliates' or (y) Buyer's Affiliates or Buyer's or its Affiliates' respective current, former or future directors, officers, employees, agents, partners, managers, members, stockholders, assignees, or representatives (each, a "Related Party") shall have any liability in connection with this Agreement or any Proceeding in connection therewith (whether in tort, contract or otherwise), and (iii) Parent and Buyer, as applicable, shall have no rights of recovery in respect of this Agreement against any Related Party, as applicable, whether by or through attempted piercing of the corporate veil, by or through any Proceeding (whether in tort, contract or otherwise) by or on behalf of Parent or Buyer, as applicable, against any Related Party, as applicable, by the enforcement of any judgment, fine or penalty or by virtue of any statute, regulation or other applicable Requirements of Law, or otherwise.

Section 12.16 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the internal Requirements of Law (without regard to principles of conflicts of law) of the State of Delaware. By the execution and delivery of this Agreement, Buyer and Parent submit to the personal jurisdiction of any federal or state court located in the State of Delaware in any suit or proceeding arising out of or relating to this Agreement and agrees to exclusively bring any such suit or proceeding in such forum. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.17 Certain Matters Regarding Representation of the Acquired Company and Parent.

(a) The legal department ("Parent Legal") of Parent, in concert with certain outside counsel, including Winston & Strawn LLP (together with Parent Legal, "Parent's Counsel"), has acted as counsel for Parent and its Affiliates, including Sellers and the Acquired Company (the "Clients"), in connection with this Agreement, the Buyer Ancillary Agreements and the Parent Ancillary Agreements and the transactions contemplated hereby and thereby (the "Transaction Engagements"), and in that connection not as counsel for any other Person, including Buyer or its Affiliates. Only the Clients shall be considered clients of Parent's Counsel in the Transaction Engagements. Accordingly, all communications between any of the Clients and Parent's Counsel in the course of the Transaction Engagements shall be deemed to be attorney-client confidences that belong solely to Parent and not to Buyer or any of its Affiliates (including, after the Closing, the Acquired Company), in each case so long as such communications would be subject to a privilege or protection if they were being requested in a Proceeding by an unrelated third party. Buyer and its Affiliates (including, after the Closing, the Acquired Company) shall not have access to any such communications, or to the files of Parent's Counsel relating to the Transaction Engagements, whether or not the Closing shall have occurred. Without limiting the generality of the foregoing, notwithstanding that the Business (including the Acquired Company) is or was a client in the Transaction Engagements, upon and after the Closing, except with respect to any communications that would not be subject to a privilege or protection if they were being requested in a Proceeding by an unrelated third party, (i) Parent and its Affiliates shall be the sole holders of the attorney-client privilege with respect to the Transaction Engagements, and neither Buyer nor any of its Affiliates shall be a holder thereof, (ii) to the extent that files of Parent's Counsel in respect of the Transaction Engagements constitute property of the Clients (including the Acquired Company), only Parent and its Affiliates shall hold such property rights, and (iii) Parent's Counsel shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files (including the Acquired Company), Buyer or any of its Affiliates by reason of any attorney-client relationship between Parent's Counsel and the Clients (including the Acquired Company) or otherwise. Notwithstanding the foregoing, to the extent any files of Parent's Counsel or communications between any of the Clients and Parent's Counsel relate to the Business, Acquired Assets, Assumed Liabilities or the Acquired Company and are otherwise unrelated to the Transaction Engagements, such files and communications shall not be privileged or subject to protection against Buyer and its Affiliates (including, after the Closing, the Acquired Company).

(b) Upon and after the Closing, the Business (including the Acquired Company) shall cease to have any attorney-client relationship with Parent's Counsel, unless otherwise agreed to in writing by Parent.

(c) Buyer agrees, on its own behalf and on behalf of the Buyer Group Members and, after the Closing, the Acquired Company (collectively, the "Waiving Parties"), that, following the Closing, Parent's Counsel may serve as counsel to Parent, Sellers and their respective Affiliates in connection with any matters related to this Agreement, the Buyer Ancillary Agreements, the Parent Ancillary Agreements or the transactions contemplated hereby or thereby, including any litigation, claim or obligation arising out of or relating to this Agreement, the Buyer Ancillary Agreements, the Parent Ancillary Agreements or the transactions contemplated hereby or thereby, notwithstanding any representation by Parent's Counsel prior to the Closing Date of the Business (including the Acquired Company). The Waiving Parties hereby (i) waive any claim they have or may have that Parent Counsel has a conflict of interest or is otherwise prohibited from engaging in such representation and (ii) agree that, in the event that a dispute arises after the Closing between any Waiving Party, on the one hand, and Parent, any Seller or their respective Affiliates, on the other hand, Parent Counsel may represent Parent, any Seller and/or any of their respective Affiliates in such dispute even though the interests of such Person(s) may be directly adverse to any Waiving Party and even though Parent's Counsel may have represented the Business (including the Acquired Company) in a matter substantially related to such dispute.

(d) Buyer acknowledges that it has consulted with independent counsel of its own choosing with respect to the meaning and effect of this Section 12.17, and understands such meaning and effect.

Section 12.18 Release.

(a) Effective upon the Closing, and in consideration of the transactions contemplated by this Agreement, and the additional covenants and promises set forth in this Agreement, Parent, on behalf of itself and its successors, assigns, heirs, beneficiaries, creditors, representatives, agents and Affiliates (each, a "Releasing Party"), hereby fully, finally and irrevocably releases, acquits and forever discharges (i) the Acquired Company, (ii) the Acquired Company's officers, directors and employees and (iii) the Affected Employees (each, a "Released Party") from any and all commitments, Liabilities, Proceedings, debts, claims, counterclaims, suits, damages, demands, obligations, costs, expenses, and compensation of every kind and nature whatsoever, past, present, or future, at law or in equity, whether known or unknown, contingent or otherwise, which such Releasing Parties, or any of them, had, has, or may have had at any time in the past until the Closing against the Released Parties, or any of them, that relate to or arise out of (i) the Business, (ii) such Releasing Party's prior relationship with the Released Parties or (iii) such Releasing Party's rights or status as a direct or indirect equityholder, lender, creditor, officer or director of the Acquired Company (collectively, for purposes of this Section 12.18, "Causes of Action"); provided, however, that no claims related to criminal activity or other fraudulent activity of an Affected Employee or the Acquired Company's officers, directors or employees that causes financial harm to Parent or its Affiliates prior to Closing shall be released hereby. Parent hereby represents to the Released Parties that (x) no Releasing Party has assigned any Causes of Action or possible Causes of Action against any Released Party, (y) each Releasing Party fully intends to release all Causes of Action against the Released Parties including, without limitation, unknown and contingent Causes of Action (other than those specifically reserved above), and (z) each Releasing Party has consulted with counsel with respect to the execution and delivery of this general release and have been fully apprised of the consequences hereof. Furthermore, Parent agrees not to (and agrees to cause each Releasing Party not to) institute any litigation, lawsuit, claim or action against any Released Party with respect to the released Causes of Action.

[*Signature page follows.*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CHART INDUSTRIES, INC.

By: /s/ Jillian C. Evanko
Name: Jillian C. Evanko
Title: Chief Executive Officer and President

CRYOPORT, INC.

By: /s/ Jerrell Shelton
Name: Jerrell Shelton
Title: President and CEO

Exhibit 10.1

Execution Version

SECURITIES PURCHASE AGREEMENT

BY AND BETWEEN

CRYOPORT, INC.,

AND

BTO FREEZE PARENT L.P.

Dated as of August 24, 2020

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EXHIBITS

SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT dated as of August 24, 2020 (this "Agreement") is by and between Cryoport, Inc., a Nevada corporation (the "Company"), and BTO Freeze Parent L.P., a Delaware limited partnership (the "Purchaser"). Capitalized terms used but not defined herein have the meanings assigned to them in Exhibit A.

Simultaneously with the execution and delivery of this Agreement, the Company, is entering into a Purchase Agreement (as it may be amended or supplemented from time to time, the "Chart Purchase Agreement," and the transactions contemplated thereby, the "Acquisition"), by and between the Company and Chart Industries, Inc., a Delaware corporation ("Chart"), pursuant to, and on the terms and subject to the conditions of which, the Company or its subsidiary designees will acquire certain assets and assume certain liabilities of Chart's cryobiological storage business (the "Cryo Business").

Concurrent with the consummation of the Acquisition, the Purchaser desires to purchase from the Company, and the Company desires to issue and sell to the Purchaser, 250,000 shares of the Company's Series C Convertible Preferred Stock, par value $.001 per share (the "Series C Preferred Stock") and 675,536 shares of the common stock of the Company, par value $.001 per share ("Common Stock"), on the terms and subject to the conditions hereinafter set forth.

In consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

PURCHASE AND SALE OF PURCHASED SHARES

Section 1.1 Purchase and Sale. On the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, at the Closing, the Purchaser shall purchase, and the Company shall issue and sell to the Purchaser, (a) 250,000 shares of Series C Preferred Stock with an original purchase price of $1,000 per share (the "Purchased Preferred Shares") and (b) 675,536 shares of Common Stock (the "Purchased Common Shares" and together with the Purchased Preferred Shares, the "Purchased Shares") for an aggregate purchase price of the Purchased Shares delivered at Closing of $275,000,000 (the "Purchase Price"). The Series C Preferred Stock shall have the rights, powers, preferences and privileges set forth in the Certificate of Designation (the "Certificate of Designation") attached as Exhibit B.

Section 1.2 Closing. On the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, the closing of the issuance, sale and purchase of the Purchased Shares (the "Closing") shall take place remotely via the exchange of final documents and signature pages, on such date on which all of the conditions set forth in Article V have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at such time), or such other time and place as the Company and the Purchaser may agree. The date on which the Closing is to occur is herein referred to as the "Closing Date." At the Closing, upon receipt by the Company of payment of the full purchase price to be paid at the Closing therefor by or on behalf of such Purchaser to the Company by wire transfer of immediately available funds to an account designated in writing by the Company, the Company will deliver to the Purchaser evidence reasonably satisfactory to the Purchaser of the issuance of the Purchased Shares in the name of the Purchaser by book-entry on the books and records of the Company.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Purchaser as of the date hereof and as of the Closing Date (except to the extent made only as of a specified date in which case as of such date), that, except (a) as set forth in the SEC Documents filed by the Company with the SEC since January 1, 2018 and prior to the date hereof (other than disclosures in the "Risk Factors" or "Forward-Looking Statements" sections or similarly captioned sections of any such filings) and (b) as set forth on Exhibit D (the "Disclosure Letter") (all such exceptions disclosed in the Disclosure Letter being numbered to correspond to the applicable Section of this Article II, provided, however, that any such exception shall be deemed to be disclosed with respect to each other representation or warranty to which the relevance of such exception is reasonably apparent on the face of such disclosure):

Section 2.1 Organization and Power. The Company and each of its Subsidiaries is a corporation, limited liability company, partnership or other entity validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation (as applicable) and has all requisite corporate, limited liability company, partnership or other entity power and authority to own or lease its properties and to carry on its business as presently conducted and as proposed to be conducted. The Company and each of its Subsidiaries is duly licensed or qualified to do business as a foreign corporation, limited liability company, partnership or other entity in each jurisdiction wherein the character of its property or the nature of the activities presently conducted by it, makes such qualification necessary, except where the failure to so qualify has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. True, correct and complete copies of the Company's organizational documents are included in the SEC Documents filed with the SEC.

Section 2.2 Authorization; No Conflicts.

(a) The Company has all necessary corporate power and authority and has taken all necessary corporate action required for the due authorization, execution, delivery and performance by the Company of this Agreement and the Registration Rights Agreement, and the consummation by the Company of the transactions contemplated hereby and thereby, the filing of the Certificate of Designation with the Nevada Secretary of State and for the due authorization, issuance, sale and delivery of the Purchased Shares and the reservation, issuance and delivery of the Conversion Shares. This Agreement has been, and the Registration Rights Agreement, at the Closing will be, duly executed and delivered by the Company. Assuming due execution and delivery thereof by each of the other parties hereto or thereto, this Agreement and the Registration Rights Agreement will each be a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar legal requirement relating to or affecting creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

(b) The authorization, execution, delivery and performance by the Company of this Agreement and the Registration Rights Agreement, and the consummation by the Company of the transactions contemplated hereby and thereby, including the filing of the Certificate of Designation and the issuance of the Purchased Shares and the Conversion Shares do not and will not: (x) violate or result in the breach of any provision of the Articles of Incorporation or Bylaws of the Company; or (y) with such exceptions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) violate any provision of, constitute a breach of, or default under, any judgment, order, writ, or decree applicable to the Company or any of its Subsidiaries or any mortgage, loan or credit agreement, indenture, bond, note, deed of trust, lease, sublease, license, contract or other agreement (each, a "Contract") to which the Company or any of its Subsidiaries is a party or accelerate the Company's or, if applicable, any of its Subsidiaries' obligations under any such Contract; (ii) violate any provision of, constitute a breach of, or default under, any applicable state, federal or local law, rule or regulation; or (iii) result in the creation of any lien upon any assets of the Company or any of its Subsidiaries or the suspension, revocation or forfeiture of any franchise, permit or license granted by a governmental authority to the Company or any of its Subsidiaries, other than liens under federal or state securities laws.

Section 2.3 Government Approvals. No consent, approval or authorization of, or filing with, any court or governmental authority is or will be required on the part of the Company in connection with the execution, delivery and performance by the Company of this Agreement and the Registration Rights Agreement, or in connection with the issuance of the Purchased Shares or the Conversion Shares, except for (a) the filing of the Certificate of Designation with the Nevada Secretary of State; (b) those which have already been made or granted; (c) the filing of a Form D and current report on Form 8-K with the SEC; (d) filings with applicable state securities commissions; or (e) the listing of the Conversion Shares with the Nasdaq Stock Market.

Section 2.4 Authorized and Outstanding Stock.

(a) The authorized capital stock of the Company consists of 100,000,000 shares of Common Stock and 2,500,000 shares of preferred stock, par value $.001 per share ("Preferred Stock"). Of such Preferred Stock, 800,000 shares are designated as Class A Preferred Stock, 585,000 shares are designated as Class B Preferred Stock and upon the filing of the Certificate of Designation with the Nevada Secretary of State, 250,000 shares will be designated as the Series C Preferred Stock.

(b) As of August 21, 2020 (the "Capitalization Date"), (i) 38,781,290 shares of Common Stock were issued and outstanding, (ii) zero shares of Class A Preferred Stock were issued and outstanding, (iii) zero shares of Class B Preferred Stock were issued and outstanding, (iv) 7,802,100 shares of Common Stock were reserved for issuance upon the exercise of outstanding stock options issued pursuant to the Stock Plans, (v) zero shares of Common Stock were reserved for issuance upon the exercise of rights granted pursuant to the Company's warrants to purchase Common Stock and (vi) 4,810,002 shares of Common Stock were reserved for issuance upon conversion of the Convertible Senior Notes. Except as set forth in the foregoing sentence, there are no outstanding securities of the Company convertible into or exercisable or exchangeable for shares of capital stock of, or other equity or voting interests of any character in, the Company.

(c) All of the issued and outstanding shares of Common Stock of the Company have been duly authorized and are validly issued, fully paid and non-assessable. The Purchased Shares have been duly authorized and, when issued in accordance with the terms hereof, the Purchased Shares will be, duly authorized and validly issued and fully paid and non-assessable and will not be subject to any preemptive right or any restrictions on transfer under applicable law or any contract to which the Company is a party, other than, in the case of restrictions on transfer, those under applicable state and federal securities laws and Section 4.2 of this Agreement. The shares of Common Stock issuable upon conversion of the Purchased Preferred Shares (the "Conversion Shares") have been duly authorized and reserved for issuance and, when issued upon conversion of the Purchased Shares in accordance with the terms thereof as set forth in the Certificate of Designation, will be validly issued and fully paid and non-assessable. No share of Common Stock has been, and none of the Purchased Shares and Conversion Shares will be when issued, issued in violation of any preemptive right arising by operation of law, under the Articles, the Bylaws or any contract, or otherwise. None of the Purchased Shares and Conversion Shares will be when issued subject to any restrictions on transfer under applicable law or any contract to which the Company is a party, other than, in the case of restrictions on transfer, those under applicable state and federal securities laws, and Section 4.2 of this Agreement. When issued in accordance with the terms hereof and the terms of the Certificate of Designation (as applicable), the Purchased Shares and Conversion Shares will be free and clear of all liens (other than liens incurred by Purchaser or its Affiliates, restrictions arising under applicable securities laws, or restrictions imposed by the this Agreement, the Certificate of Designation or the Registration Rights Agreement).

(d) Except as otherwise expressly described in this Section 2.4: (i) no subscription, warrant, option, convertible security or other right, commitment, agreement, arrangement issued by the Company or any other obligation of the Company to purchase or acquire any shares of capital stock of the Company is authorized or outstanding; (ii) there is not any commitment, agreement, arrangement or obligation of the Company to issue any subscription, warrant, option, convertible security or other such right or to issue or distribute capital stock of, or other equity or voting interest (or voting debt) in, the Company; (iii) the Company has no obligation to purchase, redeem or otherwise acquire any shares of its capital stock or to pay any dividend or make any other distribution in respect thereof; (iv) there are no obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interests (or voting debt) in, the Company; (v) there are no outstanding shares of capital stock of, or other equity or voting interests of any character in, the Company as of the date hereof other than shares that have become outstanding after the Capitalization Date which were reserved for issuance as of the Capitalization Date as set forth in Section 2.4(a) or pursuant to the exercise, after the Capitalization Date, of outstanding stock options described in Section 2.4(b)(iv) or stock options issued and subsequently exercised after the Capitalization Date; and (vi) there are no agreements, arrangements or commitments between the Company and any Person relating to the acquisition, disposition or voting of the capital stock of, or other equity or voting interest (or voting debt) in, the Company. There exists no preemptive right, whether arising by operation of law, under the Articles, the Bylaws or any contract, or otherwise, with respect to the issuance of any capital stock of the Company.

Section 2.5 Subsidiaries. Other than any Subsidiaries of the Company to be formed following the date hereof in connection with the transactions contemplated by the Chart Purchase Agreement or acquired in connection with the Company's acquisition of CryoPDP, the Company's Subsidiaries consist solely of all the entities listed on Exhibit 21 to the Company's Form 10-K for the year ended December 31, 2019. The Company, directly or indirectly, owns of record and beneficially, free and clear of all liens, all of the issued and outstanding capital stock or equity interests of each of its Subsidiaries. All of the issued and outstanding capital stock or equity interests of the Company's Subsidiaries has been duly authorized and validly issued, were not issued in violation of an preemptive right, right of first refusal or similar right, and in the case of corporations, is fully paid and non-assessable. Except as described in the SEC Documents, there are no outstanding rights, options, warrants, preemptive rights, conversion rights, rights of first refusal or similar rights for the purchase or acquisition from any of the Company's Subsidiaries of any securities of such Subsidiaries nor are there any commitments to issue or execute any such rights, options, warrants, preemptive rights, conversion rights or rights of first refusal.

Section 2.6 Private Placement. Assuming the accuracy of the representations and warranties of the Purchaser set forth in Section 3.4 (*Investment Representations*), the offer and sale of the Purchased Shares pursuant to this Agreement will be exempt from the registration requirements of the Securities Act. Without limiting the foregoing, neither the Company nor, to the knowledge of the Company, any other Person authorized by the Company to act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of Series C Preferred Stock, and neither the Company nor, to the knowledge of the Company, any Person acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or issuance of Series C Preferred Stock under this Agreement to be integrated with prior offerings by the Company for purposes of the Securities Act that would result in none of Regulation D or any other applicable exemption from registration under the Securities Act to be available, nor will the Company take any action or steps that would cause the offering or issuance of Series C Preferred Stock under this Agreement to be integrated with other offerings by the Company.

Section 2.7 SEC Documents; Financial Information. Since January 1, 2018, the Company has timely filed (a) all annual and quarterly reports and proxy statements (including all amendments, exhibits and schedules thereto) and (b) all other reports and other documents (including all amendments, exhibits and schedules thereto), in each case required to be filed by the Company with the SEC pursuant to the Exchange Act and the Securities Act. As of their respective filing dates, such SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act and the rules and regulations of the SEC thereunder applicable to such SEC Documents, and as of their respective dates none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Documents (the "Financial Statements") comply as of their respective dates in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto (except as may be indicated in the notes thereto or, in the case of the unaudited statements, as permitted by Form 10-Q promulgated by the SEC), have been prepared in accordance with GAAP (except, in the case of unaudited quarterly statements, as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC) applied on a consistent basis during the periods involved (except (i) as may be indicated in the notes thereto or (ii) as permitted by Regulation S-X) and present fairly in all material respects as of their respective dates the consolidated financial position of the Company and its Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for each of the respective periods, all in conformity with GAAP. Neither the Company nor any of its Subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP, to be reflected on a consolidated balance sheet of the Company (including the notes thereto) except liabilities (i) reflected or reserved against in the balance sheet (or the notes thereto) of the Company and its Subsidiaries as of June 30, 2020 (the "Balance Sheet Date") included in the SEC Documents, (ii) incurred after the Balance Sheet Date in the ordinary course of business and that do not arise from any material breach of a Contract, (iii) as expressly contemplated by this Agreement or otherwise incurred in connection with the Transactions, (iv) that have been discharged or paid prior to the date of this Agreement or (v) as would not, individually or in the aggregate, have had or reasonably be expected to have, a Material Adverse Effect. There is no transaction, arrangement or other relationship between the Company and/or any of its Subsidiaries and an unconsolidated or other off-balance sheet entity that is required by applicable Law to be disclosed by the Company in its SEC Documents and is not so disclosed.

Section 2.8 Internal Control Over Financial Reporting. The Company has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's outside auditors and the Audit Committee of the Board of Directors (a) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

Section 2.9 Disclosure Controls and Procedures. The Company has established and maintains, and at all times since January 1, 2018, has maintained, disclosure controls and procedures (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act) that are (x) designed to provide reasonable assurance that material information relating to the Company, including its Subsidiaries, that is required to be disclosed by the Company in the reports that it furnishes or files under the Exchange Act is reported within the time periods specified in the rules and forms of the SEC and that such material information is communicated to the Company's management to allow timely decisions regarding required disclosure. and (y) sufficient to provide reasonable assurance that (a) transactions are executed in accordance with Company management's general or specific authorization, (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, and to maintain accountability for assets, (c) access to assets is permitted only in accordance with Company management's general or specific authorization and (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over, and procedures relating to, financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. Since January 1, 2018, there has not been any fraud, whether or not material, that involves management or other employees of the Company or any of its Subsidiaries who have a significant role in the Company's internal controls over financial reporting. As of the date of this Agreement, to the knowledge of the Company, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

Section 2.10 Litigation. There is no litigation or governmental proceeding, suit, arbitration or, to the knowledge of the Company, investigation, pending or, to the knowledge of the Company, threatened in writing, against the Company or any of its Subsidiaries or affecting any of the business, operations, properties, rights or assets of the Company or any of its Subsidiaries which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is subject to or in default with respect to any order, writ, injunction, decree, ruling or decision of any court, commission, board or other government agency that is expressly applicable to the Company or any of its Subsidiaries or any of their respective assets which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.11 Compliance with Laws; Permits. The Company and its Subsidiaries are in compliance with all applicable laws, common law, statutes, ordinances, codes, rules or regulations or other similar requirement enacted, adopted, promulgated, or applied by any governmental authority, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company and its Subsidiaries possess all permits, franchises, certificates, approvals, authorizations and licenses of governmental authorities that are required to conduct their business, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.12 Taxes. The Company and each of its Subsidiaries has filed all Tax Returns required to be filed within the applicable periods for such filings (with due regard to any extension) and has paid all Taxes required to be paid, except for any such failures to file or pay that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as would not, in each case, reasonably be expected to have a Material Adverse Effect, the Company (a) has not been advised that any of its returns, federal, state or other, have been or are being audited as of the date hereof, (b) has not been advised of any deficiency in assessment or proposed judgment to its federal, state or other taxes, and (c) has no liability for any tax to be imposed upon its properties or assets as of the date of this Agreement that is not adequately provided for.

Section 2.13 Employee Matters.

(a) Except where the failure to comply has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) the Company and its Subsidiaries are in compliance with all applicable laws relating to labor, employment, fair employment practices, terms and conditions of employment, and wages and hours, and with the terms of the ERISA Documents, and each such ERISA Document is in compliance with all applicable laws (including, without limitation, the applicable requirements of ERISA and the Code); and (ii) with respect to the ERISA Documents, no actions, liens, lawsuits, claims or complaints (other than routine claims for benefits, appeals of such claims and domestic relations order proceedings) are pending or, to the knowledge of the Company, threatened.

(b) Neither the Company, its Subsidiaries, nor any other entity which, together with the Company or its Subsidiaries, would be treated as a single employer under Section 4001 of ERISA or Section 414 of the Code, has during the last six (6) years maintained, sponsored or contributed to or had any liability with respect to any defined benefit pension plan that is subject to Title IV of ERISA or any "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA).

(c) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, none of the execution of, or the completion of the transactions contemplated by, this Agreement (whether alone or in connection with any other event(s)), will result in (i) any compensation or benefit becoming due, or any increase in the amount of any compensation or benefit due, to any current or former employee of the Company or its Subsidiaries, or (ii) acceleration of the time of payment, vesting or funding of compensation or benefits to any current or former employee of the Company or its Subsidiaries. No ERISA Document provides for reimbursement or gross-up of any excise tax under Section 409A or Section 4999 of the Code.

Section 2.14 Environmental Matters. The Company and its Subsidiaries are in compliance with all, and have not violated any, applicable Requirements of Environmental Law and possess and are in compliance with all, and have not violated any, required Environmental Permits, except, in each case, where the failure to comply or possess has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company and its Subsidiaries have not received any written notice or claim from any Person of any violation or alleged violation of, or any liability or alleged liability under or related to, any Requirements of Environmental Law or Environmental Permit or any presence or release of any Hazardous Substance, and there is no basis for any such notice or claim, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has assumed or retained, as a result of any contract, any liabilities under any Requirements of Environmental Law or concerning any Hazardous Substances, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.15 Intellectual Property; Security. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) the Company and its Subsidiaries own their material proprietary intellectual property, free and clear of all liens, (b) the conduct of the businesses of the Company and its Subsidiaries does not infringe or violate the intellectual property of any Person and no Person is infringing or violating their intellectual property and (c) the Company and its Subsidiaries take commercially reasonable efforts to protect the confidentiality of their trade secrets and the integrity, continuous operation and security of their software and systems (and the data stored or processed therein) and there have been no breaches, outages or violations of or unauthorized accesses to same (except for those that were resolved without material cost, liability or the duty to notify any Person) in the last three (3) years.

Section 2.16 Registration Rights. Except as provided in this Agreement or the Registration Rights Agreement, the Company has not granted any rights to register under the Securities Act any of its presently outstanding securities or any of its securities that may be issued subsequently.

Section 2.17 Investment Company Act. The Company is not, and immediately after giving effect to the sale of the Purchased Shares in accordance with this Agreement and the application of the proceeds thereof will not be required to be registered as, an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act.

Section 2.18 Nasdaq. The Company's Common Stock is listed on the Nasdaq Stock Market, and no event has occurred, and the Company is not aware of any event that is reasonably likely to occur, that would result in the Common Stock being delisted from the Nasdaq Stock Market. The Company is in compliance in all material respects with the listing and listing maintenance requirements of the Nasdaq Stock Market applicable to it for the continued trading of its Common Stock on the Nasdaq Stock Market.

Section 2.19 No Brokers or Finders. No Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or claim against or upon the Company, any of its Subsidiaries or the Purchaser for any commission, fee or other compensation as a finder or broker because of any act of the Company or any of its Subsidiaries, other than Morgan Stanley & Co. LLC whose fees are the sole responsibility of the Company.

Section 2.20 Illegal Payments; FCPA Violations. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, since January 1, 2015, none of the Company, any of its Subsidiaries or, to the knowledge of the Company, any officer, director, employee agent, representative or consultant acting on behalf of the Company or any of its Subsidiaries (and only in their capacities as such) has, in connection with the business of the Company: (a) unlawfully offered, paid, promised to pay, or authorized the payment of, directly or indirectly, anything of value, including money, loans, gifts, travel, or entertainment, to any Government Official with the purpose of (i) influencing any act or decision of such Government Official in his or her official capacity; (ii) inducing such Government Official to perform or omit to perform any activity in violation of his or her legal duties; (iii) securing any improper advantage; or (iv) inducing such Government Official to influence or affect any act or decision of such Governmental Entity, except, with respect to the foregoing clauses (i) through (iv), as permitted under the U.S. Foreign Corrupt Practices Act and other applicable law; (b) made any illegal contribution to any political party or candidate; (c) made, offered or promised to pay any unlawful bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature, directly or indirectly, in connection with the business of the Company, to any person, including any supplier or customer; (d) knowingly established or maintained any unrecorded fund or asset or made any false entry on any book or record of the Company or any of its Subsidiaries for any purpose; or (e) otherwise violated the U.S. Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, as amended, or any other applicable anti-corruption or anti-bribery law.

Section 2.21 Economic Sanctions. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Company is not in contravention of any sanction, and has not engaged in any conduct sanctionable, under U.S. economic sanctions Laws, including applicable laws administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, 31 C.F.R. Part V, the Iran Sanctions Act, as amended, the Comprehensive Iran Sanctions, Accountability and Divestment Act, as amended, the Iran Threat Reduction and Syria Human Rights Act, as amended, the Iran Freedom and Counter-Proliferation Act of 2012, as amended, and any executive order issued pursuant to any of the foregoing. The Company and each of its Subsidiaries has instituted and maintains a system of internal controls designed to provide reasonable assurance that violations of applicable anti-corruption Laws and U.S. economic sanctions Laws will be prevented, detected, and deterred.

Section 2.22 Absence of Certain Changes. (a) Since December 31, 2019, except for the execution and performance of this Agreement and any other agreements contemplated hereby and the discussions, negotiations and transactions related hereto, the business of the Company and its Subsidiaries has been carried on and conducted in all material respects in the ordinary course of business, and (b) since December 31, 2019, there has not been any Material Adverse Effect.

Section 2.23 No Rights Agreement; Anti-Takeover Provisions.

(a) Neither the Company nor any of its Subsidiaries is party to a stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan.

(b) Prior to Closing, the Company and the Board of Directors have taken all necessary actions to (including, if necessary, adoption of a provision in the Bylaws as contemplated by Nevada Revised Statutes 78.378(1)) to ensure that no restrictions included in any Antitakeover Provision is, or will be, applicable to this Agreement or the Purchaser's acquisition, or the Company's issuance, of the Purchased Shares and the Conversion Shares in accordance with this Agreement and the Certificate of Designation.

Section 2.24 No Additional Representations. Except for the representations and warranties made by the Company in this Article II (as modified by the Disclosure Letter) and in any certificate delivered to the Purchaser in connection with this Agreement, neither the Company nor any other Person makes any express or implied representation or warranty with respect to the Company or any Subsidiaries or their respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects, and the Company hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither the Company nor any other Person makes or has made any representation or warranty to the Purchaser, or any of its Affiliates or representatives, with respect to (a) any financial projection, forecast, estimate, budget or prospect information relating to the Company or any of its Subsidiaries or their respective business, or (b) any oral or written information presented to the Purchaser or any of its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated hereby. Notwithstanding anything to the contrary herein, nothing in this Agreement shall limit the right of the Purchaser and its Affiliates to rely on the representations, warranties, covenants and agreements expressly set forth in this Agreement and in any certificate delivered to the Purchaser in connection with this Agreement, nor will anything in this Agreement operate to limit any claim by any Purchaser or any of its respective Affiliates for fraud.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Company as of the date hereof and as of the Closing Date (except to the extent made only as of a specified date in which case as of such date) that:

Section 3.1 Organization and Power. The Purchaser is a Delaware limited partnership duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation and has all necessary power and authority to own its properties and to carry on its business as presently conducted.

Section 3.2 Authorization, Etc. The Purchaser has all necessary power and authority and has taken all necessary entity action required for the due authorization, execution, delivery and performance by the Purchaser of this Agreement and the Registration Rights Agreement and the consummation by the Purchaser of the transactions contemplated hereby and thereby. The authorization, execution, delivery and performance by the Purchaser of this Agreement and the Registration Rights Agreement, and the consummation by the Purchaser of the transactions contemplated hereby and thereby do not and will not: (a) violate or result in the breach of any provision of the organizational documents of the Purchaser; or (b) with the exceptions that are not reasonably likely to have, individually or in the aggregate, a material adverse effect on its ability to perform its obligations under this Agreement and the Registration Rights Agreement: (i) violate any provision of, constitute a breach of, or default under, any judgment, order, writ, or decree applicable to the Purchaser or any material contract to which the Purchaser is a party; or (ii) violate any provision of, constitute a breach of, or default under, any applicable state, federal or local law, rule or regulation. This Agreement has been, and the Registration Rights Agreement will, at the Closing be party will be, duly executed and delivered by the Purchaser. Assuming due execution and delivery thereof by the other parties hereto or thereto, this Agreement and the Registration Rights Agreement will each be a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, except as the enforceability may be limited by applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar legal requirement relating to or affecting creditors' rights generally and except as the enforceability is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

Section 3.3 Government Approvals. No consent, approval, license or authorization of, or filing with, any court or governmental authority is or will be required on the part of the Purchaser in connection with the execution, delivery and performance by the Purchaser of this Agreement and the Registration Rights Agreement, except for: (a) those which have already been made or granted; (b) the filing with the SEC of a Schedule 13D or Schedule 13G and a Form 3 to report the Purchaser's ownership of the Purchased Shares; or (c) those where the failure to obtain such consent, approval or license would not have a material adverse effect on the ability of the Purchaser to perform its obligations hereunder.

Section 3.4 Investment Representations.

(a) The Purchaser is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(b) The Purchaser has been advised by the Company that the Purchased Shares have not been registered under the Securities Act, that the Purchased Shares will be issued on the basis of the statutory exemption provided by Section 4(a)(2) under the Securities Act or Regulation D promulgated thereunder, or both, relating to transactions by an issuer not involving any public offering and under similar exemptions under certain state securities laws, that this transaction has not been reviewed by, passed on or submitted to any federal or state agency or self-regulatory organization where an exemption is being relied upon, and that the Company's reliance thereon is based in part upon the representations made by the Purchaser in this Agreement and the Registration Rights Agreement. The Purchaser acknowledges that it has been informed by the Company of, or is otherwise familiar with, the nature of the limitations imposed by the Securities Act and the rules and regulations thereunder on the transfer of securities.

(c) The Purchaser is purchasing the Purchased Shares for its own account and not with a view to, or for sale in connection with, any distribution thereof in violation of federal or state securities laws.

(d) By reason of its business or financial experience, the Purchaser has the capacity to protect its own interest in connection with the transactions contemplated hereunder.

(e) The Company has provided to the Purchaser documents and information that the Purchaser has requested relating to an investment in the Company. The Purchaser recognizes that investing in the Company involves substantial risks, and has taken full cognizance of and understands all of the risk factors related to the acquisition of the Purchased Shares. The Purchaser has carefully considered and has, discussed with the Purchaser's professional legal, tax and financial advisers the suitability of an investment in the Company, and the Purchaser has determined that the acquisition of the Purchased Shares is a suitable investment for the Purchaser. The Purchaser has not relied on the Company for any tax or legal advice in connection with the purchase of the Purchased Shares. In evaluating the suitability of an investment in the Company, the Purchaser has not relied upon any representations or other information (other than the representations and warranties of the Company set forth in Article II).

Section 3.5 No Prior Ownership. As of the date hereof and as of immediately prior to the Closing, the Purchaser does not have record or beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of any shares of the Company's Common Stock. Since August 24, 2018, neither Purchaser nor any affiliate or associate (within the meaning of Nevada Revised Statutes 78.412 and 78.413, respectively) of the Purchaser was the beneficial owner, directly or indirectly, of 10 percent or more of the voting power of the then outstanding shares of the Company.

Section 3.6 No Brokers or Finders. No Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or claim against or upon the Company, any of its Subsidiaries or any Purchaser for any commission, fee or other compensation as a finder or broker because of any act by the Purchaser and for which the Company will be liable.

Section 3.7 Financing. The Purchaser has delivered to the Company true, correct, and complete copies of an executed commitment letter among Blackstone Tactical Opportunities Fund III L.P. and the Purchaser, dated as of the date hereof (together with all annexes, schedules and exhibits (in each case, if any) thereto, the "Equity Commitment Letter", and the commitment thereunder, the "Equity Financing Commitment") to provide, subject to the terms and conditions therein, cash in the aggregate amount set forth therein (the "Equity Financing"). The Equity Financing is in amounts sufficient to enable the Purchaser to perform their obligations under this Agreement and to consummate the transactions contemplated hereby. The Equity Commitment Letter is in full force and effect and constitutes the enforceable, legal, valid and binding obligations of each of the parties thereto. The Equity Commitment Letter, including the Equity Financing Commitment thereunder, have not been withdrawn, terminated, amended, restated, replaced, supplemented or otherwise modified or waived and no such withdrawal, termination, amendment, restatement, replacement, supplement, modification or waiver is contemplated. There are no side letters or other agreements, arrangements, contracts or understandings relating to the Equity Commitment Letter that could affect the availability of the Equity Financing, and the Purchaser does not know of any facts or circumstances that may be expected to result in any of the conditions set forth in any Equity Commitment Letter not being satisfied, or the Equity Financing not being available to the Purchaser, at the Closing. No event has occurred that, with or without notice, lapse of time or both, would, or would reasonably be expected to, constitute a default or breach on the part of the Purchaser, or by any other party thereto, under any term or condition of the Equity Commitment Letter, and the Purchaser has no reason to believe that it will be unable to satisfy on a timely basis any term or condition of closing to be satisfied by it contained in the Equity Commitment Letter. Except as expressly set forth in the Equity Commitment Letter, there are no conditions precedent related to the funding of the full amount of the Equity Financing Commitment. As of the date of this Agreement, the Purchaser is not aware of any fact, circumstance or occurrence that makes any representation or warranty of the Purchaser included in this Agreement or the Equity Commitment Letter inaccurate. Assuming (i) the satisfaction of the conditions in Article V hereof and (ii) the Equity Financing is funded in accordance with their respective conditions, upon funding of the Equity Financing Commitment, the Purchaser will have at the Closing, immediately available cash funds sufficient to fund all of the amounts required to be provided by the Purchaser for the consummation of the transactions contemplated hereby, including the payment of the Purchase Price and any other amounts required to be paid in connection with the consummation of the transactions contemplated hereby, including all related fees and expenses, and are sufficient for the satisfaction of all of the Purchaser's obligations under this Agreement, as applicable.

Section 3.8 ERISA. The Purchaser does not hold, and no part of the funds used by the Purchaser to acquire any Purchased Shares constitutes, "plan assets" (within the meaning of Section 3(42) of ERISA).

Section 3.9 No Additional Representations. The Purchaser acknowledges and agrees, on behalf of itself and its Affiliates, that, except for the representations and warranties contained in Article II (as modified by the Disclosure Letter) and in any certificate delivered by the Company in connection with this Agreement, neither the Company nor any other Person, makes any express or implied representation or warranty with respect to the Company, its Subsidiaries or their respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects, and the Purchaser, on behalf of itself and its Affiliates, hereby disclaims reliance upon any such other representations or warranties. In particular, without limiting the foregoing disclaimer, the Purchaser acknowledges and agrees, on behalf of itself and its Affiliates, that neither the Company nor any other Person, makes or has made any representation or warranty with respect to, and the Purchaser, on behalf of itself and its Affiliates, hereby disclaims reliance upon (a) any financial projection, forecast, estimate, budget or prospect information relating to the Company, its Subsidiaries or their respective business, or (b) without limiting the representations and warranties made by the Company in Article II, any information presented to the Purchaser or any of its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated hereby. To the fullest extent permitted by applicable law, without limiting the representations and warranties contained in Article II, other than in the case of fraud, neither the Company nor any of its Subsidiaries shall have any liability to any Purchaser or its Affiliates or representatives on any basis (including in contract or tort, under federal or state securities laws or otherwise) based upon any other representation or warranty, either express or implied, included in any information or statements (or any omissions therefrom) provided or made available by the Company or its Subsidiaries to the Purchaser or its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated by this Agreement.

ARTICLE IV

COVENANTS OF THE PARTIES

Section 4.1 Board of Directors.

(a) Upon the Closing, the Purchaser Representative shall have the right to nominate for election or appointment, one director to the Board of Directors (the "Series C Director"). Effective as of the Closing, the Board of Directors shall increase the size of the Board of Directors in order to elect or appoint Ram Jagannath as the initial Series C Director and take all actions necessary or appropriate to appoint the Series C Director as a director of the Board of Directors effective as of the Closing Date.

(b) Thereafter, for so long as the Purchaser Parties (as defined below) hold at least 66.67% of the Series C Preferred Stock issued at the Closing, the Purchaser Representative (as defined below) on behalf of the Purchaser Parties shall have the right to nominate one person for election to the Board of Directors (a "Purchaser Nominee") each year. If the Purchaser Representative has the right to so nominate a Purchaser Nominee in a given year, the Company shall, at the annual meeting of the stockholders of the Company during such year, nominate the Purchaser Nominee for election to the Board of Directors, recommend that the holders of the Company's voting stock vote in favor of such Purchaser Nominee and use reasonable best efforts to cause the Purchaser Nominee to be elected to the Board of Directors; provided, however, that the Purchaser Nominee shall comply with the corporate governance principles and practices of the Company as in effect from time to time and applicable to directors generally (the "Governance Principles"). Without the prior written consent of the Purchaser Representative, so long as the Purchaser Representative is entitled to designate any Purchaser Nominee for election to the Board of Directors in accordance with this Section 4.1, the Board of Directors shall not cause the removal of any Series C Director from his or her directorship (except as required by law or the Company's organizational documents), unless (x) the Purchaser Parties cease to hold the minimum percentage of the Series C Preferred Stock that entitles it to nominate the Purchaser Nominee as provided above or (y) the Purchaser Parties request in writing the removal of the Series C Director. If, following election to the Board of Directors, the Purchaser Nominee resigns, is removed, or is otherwise unable to serve for any reason (including as a result of death or disability) and the Purchaser Parties then have the right to nominate a Purchaser Nominee, then, subject to compliance with the Governance Principles, the Purchaser shall be entitled to designate a replacement Purchaser Nominee, and the Board of Directors shall cause such replacement Purchaser Nominee to fill such vacancy and to be appointed to the Board of Directors. If Purchaser Nominee is not re-elected and the Purchaser still has the right to nominate such Purchaser Nominee, then, subject to compliance with the Governance Principles, the Purchaser Parties shall be entitled to designate a replacement Purchaser Nominee, and the Board of Directors shall use its reasonable best efforts to elect such replacement Purchaser Nominee to the Board of Directors. In the event that the Purchaser Parties cease to hold the minimum percentage of the Series C Preferred Stock that entitles it to nominate the Purchaser Nominee as provided above, if requested by the Board of Directors, the Purchaser Parties shall use reasonable best efforts to have such Purchaser Nominee resign as a director.

(c) The Series C Director or Purchaser Nominee, as applicable, shall be entitled to (i) reimbursement of expenses and indemnification in the same manner and to the same extent as the other members of the Board of Directors, in accordance with the Company's organizational documents and applicable Nevada law and including on the basis of the Company's director indemnification agreement, and (ii) unless waived by the Series C Director, cash and equity compensation in the same manner and to the same extent as other non-executive members of the Board of Directors, which shall be payable to the Series C Director or such Person as designated by the Series C Director. Any director minimum ownership requirements shall be deemed satisfied in respect of the Series C Director or Purchaser Nominee, as applicable, by the Purchased Shares, or any Conversion Shares, as applicable, held by the Purchaser Parties or one or more of their respective Affiliates. The Company acknowledges and agrees that it is the indemnitor of first resort (i.e., its obligations to the Series C Directors are primary and any obligation of the Purchaser Parties or their Affiliates to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Series C Director are secondary).

Section 4.2 Restrictions on Transfer.

(a) For a period of one (1) year after the Closing, the Purchaser shall not Transfer (including, for the avoidance of doubt, in connection with obtaining any Permitted Loan) any of the Purchased Preferred Shares to any Person without the consent of the Company; provided, however, that, without the consent of the Company, a Purchaser may Transfer Purchased Preferred Shares (i) to a Permitted Transferee of the Purchaser that agrees to be bound by the terms of this Agreement pursuant to a written agreement in form and substance reasonably satisfactory to the Company (and upon such Transfer the Permitted Transferee shall become a "Purchaser" for purposes of this Agreement (including this Section 4.2)); (ii) pursuant to a tender or exchange offer, merger, consolidation, division, acquisition, reorganization or recapitalization involving the Company; or (iii) following the date the Company commences a voluntary case under Title 11 of the United States Bankruptcy Code or any other similar insolvency laws.

(b) At no time shall a Purchaser knowingly Transfer any Purchased Preferred Shares or Conversion Shares to (i) any Company Competitor, or (ii) any Person who is reasonably known to have engaged in activist campaigns in the three years prior to the date of any such proposed Transfer by stating an intention to or actually attempting to (pursuant to proxy solicitation, tender or exchange offer or other means) obtain a seat on the board of directors of a company or effecting a significant change within such company, in each case, that was publicly opposed by the board of directors of such company; provided, that the restrictions set forth in this Section 4.2(b) shall not apply to Transfers into the public market pursuant to a bona fide, broadly distributed public offering, in each case made pursuant to the Registration Rights Agreement or through a bona fide sale to the public without registration effectuated pursuant to Rule 144 under the Securities Act or in connection with a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or any change of control transaction involving the Company or any Subsidiary thereof.

(c) "Permitted Loan" means any total return swap or bona fide loan or other financing arrangement, in each case entered into with a nationally recognized financial institution, including a pledge to such a financial institution to secure a bona fide debt financing and any foreclosure by such financial institution or transfer to such financial institution in lieu of foreclosure and subsequent sale of the securities, as long as such financial institution agrees with the relevant Purchaser Party and the Company that following such foreclosure or in connection with such Transfer it shall not knowingly directly or indirectly Transfer (other than pursuant to Transfers into the public market pursuant to a bona fide, broadly distributed public offering, in each case made pursuant to a registration statement or through a bona fide sale to the public without registration effectuated pursuant to Rule 144 under the Securities Act or in connection with a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or any change of control transaction involving the Company or any Subsidiary thereof) such foreclosed or Transferred, as the case may be, Common Stock or Series C Preferred Stock to a Company Competitor without the Company's consent (such agreement by the relevant financial institution, the "Foreclosure Limitations"). Any Permitted Loan entered into by a Purchaser Party or its Affiliates shall be with one or more financial institutions reasonably acceptable to the Company and, except as specified above, nothing contained in this Agreement or the Registration Rights Agreement shall prohibit or otherwise restrict the ability of any lender (or its securities' affiliate) or collateral agent to foreclose upon, or accept a Transfer in lieu of foreclosure, and sell, dispose of or otherwise Transfer the Common Stock, the Series C Preferred Stock and/or shares of Common Stock issued upon conversion of Series C Preferred Stock (including shares of Common Stock received upon conversion or redemption of the Series C Preferred Stock following foreclosure or Transfer in lieu of foreclosure on a Permitted Loan) mortgaged, hypothecated and/or pledged to secure the obligations of the borrower following an event of default under a Permitted Loan. Subject to the preceding provisions of this clause (c), in the event that any lender or other creditor under a Permitted Loan transaction (including any agent or trustee on their behalf) or any Affiliate of the foregoing exercises any rights or remedies in respect of the Series C Preferred Stock or the shares of Common Stock issuable or issued upon conversion of the Series C Preferred Stock or any other collateral for any Permitted Loan, no lender, creditor, agent or trustee on their behalf or affiliate of any of the foregoing (other than, for the avoidance of doubt, a Purchaser Party or its Affiliates) shall be entitled to any rights or have any obligations or be subject to any transfer restrictions or limitations hereunder.

(d) In any event, Restricted Securities shall not be Transferred except upon the conditions specified in Section 4.3, which conditions are intended to ensure compliance with the provisions of the Securities Act. Any attempted Transfer in violation of this Section 4.2 shall be void *ab initio*.

(e) At the Closing, the Purchaser shall deliver to the Company a duly executed, valid, accurate and properly completed Internal Revenue Service ("IRS") Form W-9 certifying that the Purchaser is a U.S. person and with the effect that the Company can make dividend payments to the Purchaser (or its nominee) without deduction or withholding for any U.S. federal withholding taxes (the "Tax Form Requirements"). The Purchaser agrees that if the information provided on any IRS Form W-9 previously delivered by the Purchaser changes, or if a lapse in time or change in circumstances renders the information on such IRS Form W-9 obsolete, expired or inaccurate in any material respect, the Purchaser shall promptly inform the Company and deliver promptly an updated IRS Form W-9.

Section 4.3 Restrictive Legends.

(a) Each certificate representing the Purchased Shares or Conversion Shares (unless otherwise permitted by the provisions of Section 4.2(b) or Section 4.3(d)) shall be stamped or otherwise imprinted with a legend in substantially the following form (in addition to any legend required under applicable state securities laws):

> "THE OFFER AND SALE OF THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY AND SUCH SHARES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT; OR (B) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT."

(b) In addition, for so long as the Purchased Preferred Shares or Conversion Shares are subject to the restrictions set forth in Section 4.2, each certificate representing the Purchased Preferred Shares or Conversion Shares shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN A SECURITIES PURCHASE AGREEMENT. THE COMPANY WILL MAIL TO THE HOLDER OF THIS CERTIFICATE A COPY OF SUCH SECURITIES PURCHASE AGREEMENT, AS IN EFFECT ON THE DATE OF MAILING, WITHOUT CHARGE, PROMPTLY AFTER RECEIPT OF A WRITTEN REQUEST THEREFOR."

(c) The Purchaser consents to the Company making a notation on its records and giving instructions to any transfer agent of the Purchased Shares or the Conversion Shares in order to implement the restrictions on transfer set forth in this Section 4.3.

(d) Prior to any proposed Transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed Transfer, a Purchaser shall give written notice to the Company of such Purchaser's intention to effect such Transfer. Each such notice shall describe the manner and circumstances of the proposed Transfer in sufficient detail, and shall be accompanied by either (i) an opinion of legal counsel reasonably satisfactory to the Company to the effect that the proposed Transfer of the Restricted Securities may be effected without registration under the Securities Act, or (ii) any other evidence reasonably satisfactory to counsel to the Company, whereupon such Purchaser shall be entitled to Transfer such Restricted Securities in accordance with the terms of the notice delivered by such Purchaser to the Company. Notwithstanding the foregoing (i) in the event a Purchaser shall give the Company a representation letter containing such representations as the Company shall reasonably request, the Company will not require such legal opinion or such other evidence (A) in a routine sales transaction in compliance with Rule 144 under the Securities Act, (B) in any transaction in which a Purchaser that is a corporation distributes Restricted Securities solely to its majority owned subsidiaries or Affiliates for no consideration or (C) in any transaction in which a Purchaser that is a partnership or limited liability company distributes Restricted Securities solely to its Affiliates (including affiliated fund partnerships), or partners or members of the Purchaser or its Affiliates for no consideration and (ii) the requirements of the preceding sentence shall not apply to (x) any pledge of Preferred Stock, Conversion Shares or Common Stock pursuant to a Permitted Loan, or (y) any foreclosure upon, or acceptance of a Transfer in lieu of foreclosure, or any sale, disposition of or other Transfer of Common Stock, the Series C Preferred Stock and/or shares of Common Stock issued upon conversion of Series C Preferred Stock (including shares of Common Stock received upon conversion or redemption of the Series C Preferred Stock following foreclosure or Transfer in lieu of foreclosure on a Permitted Loan) by any lender (or its securities' affiliate) or collateral agent under a Permitted Loan (which shall instead be governed by the terms of any applicable Issuer Agreements). Each certificate evidencing the Restricted Securities transferred shall bear the appropriate restrictive legend set forth in Section 4.3 above, except that such certificate shall not bear the first such restrictive legend if such legend is not required in order to establish compliance with any provisions of the Securities Act. Each certificate evidencing the Restricted Securities transferred shall bear the appropriate restrictive legend set forth in Section 4.3 above, except that such certificate shall not bear the first such restrictive legend if such legend is not required in order to establish compliance with any provisions of the Securities Act. Upon the request of a Purchaser of a certificate bearing the first such restrictive legend and, if necessary, the appropriate evidence as required by clause (i) or (ii) above, the Company shall promptly remove the first such restrictive legend from such certificate and from the certificate to be issued to the applicable transferee if such legend is not required in order to establish compliance with any provisions of the Securities Act and a Purchaser promptly Transfers the Purchased Shares or Conversion Shares. If a Purchaser holds a certificate bearing the second restrictive legend, the Company shall promptly remove such restrictive legend from such certificate when the provisions of Section 4.2 are no longer applicable to the applicable Purchased Shares or Conversion Shares.

Section 4.4 Standstill. Except as otherwise provided in this Agreement or the Certificate of Designation, so long as the Purchaser Representative has the right to designate or nominate a director to the Board of Directors pursuant to Section 4.1, without the prior written consent of the Company, it will not at any time, nor will it cause or permit any of its Affiliates to: (a) effect or seek, offer or propose (whether publicly or otherwise) to effect, or announce any intention to effect or cause or participate in or in any way assist, facilitate or encourage any other person to effect or seek, offer or propose (whether publicly or otherwise) to effect or participate in, (i) any acquisition of any equity securities (or beneficial ownership thereof), rights or options to acquire any equity securities (or beneficial ownership thereof), or any securities convertible into or exchangeable for any such equity securities (or beneficial ownership thereof), of the Company, (ii) any tender or exchange offer, merger or other business combination involving the Company or its Subsidiaries or assets of the Company or its Subsidiaries constituting a significant portion of the consolidated assets of the Company and its Subsidiaries, or (iii) any "solicitation" of "proxies" (as such terms are used in the proxy rules of the SEC) or consents to vote any voting securities of the Company or any of its Affiliates; (b) otherwise act to seek representation on or to control or influence the management or policies of the Company or to obtain representation on the Board of Directors of the Company (beyond their right to do so based on their representation on the Board pursuant to Section 4.1); (c) submit any shareholder proposal to the Company, (d) publicly propose any change of control or other material transaction involving the Company or (e) support or encourage any third party in doing any of the foregoing; it being understood that nothing in this Section 4.4 shall (w) restrict or prohibit the Series C Director or Purchaser Nominee, as applicable, from taking any action, or refraining from taking any action, which he or she determines, in his or her reasonable discretion, is necessary or appropriate in light of his or her fiduciary duties as a member of the Board of Directors, (x) restrict or prohibit the making or submission to the Company and/or the Board of Directors any proposal by the Purchaser Parties that would not reasonably be expected to result in the Company being obligated to publicly disclose such proposal, (y) restrict or prohibit the Purchaser's acquisition, disposition, sale or Transfer of the Purchased Shares (including the accretion of dividends thereon and any dividends payable in any other security) or Conversion Shares issuable upon conversion of the Purchased Shares, in each case, in accordance with the terms of this Agreement and the Certificate of Designation or (z) limit or restrict any Transfer pursuant to a Permitted Loan or any foreclosure thereunder or Transfer in lieu of a foreclosure thereunder.

Section 4.5 Confidentiality.

(a) The Purchaser shall keep all Confidential Information confidential and shall not, without the Company's prior written consent, disclose any Confidential Information in any manner whatsoever, in whole or in part and the Purchaser shall not use any Confidential Information, other than in connection with the performance of its obligations hereunder or for purposes of monitoring, administering or managing the Purchaser Parties' investment in the Company. The Purchaser may disclose the Confidential Information (i) to such of its Representatives who need to know the Confidential Information for such purpose, who are informed by the Purchaser of the confidential nature of the Confidential Information and directed to keep such Confidential Information confidential, (ii) to any prospective purchaser of Purchased Shares (and Conversion Shares) from such Purchaser Party or prospective financing sources in connection with the syndication and marketing of any Permitted Loan, as long as such prospective purchaser or lender agrees to be bound by substantially similar confidentiality or non-disclosure terms as are contained in this Agreement (with the Company as an express third party beneficiary of such agreement) or (iii) as may be reasonably necessary in connection with such Purchaser Party's enforcement of its rights in connection with this Agreement or its investment in the Company. The Purchaser shall be responsible for any non-compliance with this Section 4.5 by its Representatives or any such prospective purchaser.

(b) In the event that the Purchaser or any of its Representatives is required or requested by applicable law (including oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to disclose any of the Confidential Information, the Purchaser will provide the Company with prompt notice (unless such notification is prohibited by applicable law and other than in connection with a routine audit or examination by, or a blanket document request from, a regulatory or governmental entity that does not reference the Company or this Agreement) so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 4.5. In the event that such a protective order or other remedy is not obtained, that no such notice is required to be provided to the Company or that the Company waives compliance with the provisions of this Section 4.5, the Purchaser may disclose such Confidential Information without liability hereunder. The confidentiality letter agreement, dated June 6, 2020, by and between Blackstone Tactical Opportunities Advisors L.L.C. and the Company (the "Confidentiality Agreement") shall terminate simultaneously with the Closing.

Section 4.6 Financial Statements and Other Information.

(a) For so long as the Purchaser Parties collectively hold record and beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of more than five percent (5%) of the outstanding shares of the Company's Common Stock (which shall be determined assuming the conversion of all of the shares of Series C Preferred Stock), the Company shall deliver to the Purchaser Parties:

(i) within 90 days after the end of each fiscal year of the Company, (A) an audited, consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal year, (B) an audited, consolidated income statement of the Company and its Subsidiaries for such fiscal year and (C) an audited, consolidated statement of cash flows of the Company and its Subsidiaries for such fiscal year;

(ii) within 45 days after the end of each of the first three quarters of each fiscal year of the Company, (A) an unaudited, consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal quarter, (B) an unaudited, consolidated income statement of the Company and its Subsidiaries for such fiscal quarter and (C) an unaudited, consolidated statement of cash flows of the Company and its Subsidiaries for such fiscal quarter; and

(iii) reasonable access, to the extent reasonably requested by the Purchaser Parties, to discuss the Company and its Subsidiaries and their affairs, finances and matters related to capital structure and financing with its and their officers, all upon reasonable notice and at reasonable times at the Company's principal place of business; provided that any access pursuant to this Section 4.6 shall be conducted in a manner as not to interfere unreasonably with the conduct of the business of the Company and its Subsidiaries.

(b) Notwithstanding the foregoing, financial statements and other reports required to be delivered pursuant to this Section 4.6 filed by the Company with the SEC and available on EDGAR (or such other free, publicly-accessible internet database that may be established and maintained by the SEC as a substitute for or successor to EDGAR) shall be deemed to have been delivered to the Purchaser Parties on the date on which the Company posts such documents to EDGAR (or such other free, publicly-accessible internet database that may be established and maintained by the SEC as a substitute for or successor to EDGAR).

(c) Notwithstanding anything to the contrary contained in this Section 4.6, the Company shall not be required to furnish information or reports or provide access to their books and records pursuant to this Section 4.6 if the Company determines in good faith that declining to furnish such information or reports or provide such access is reasonably necessary to preserve the attorney-client privilege or to protect highly confidential or proprietary information.

(d) During the period from the date hereof through the Closing, subject to Purchaser's obligations under the Confidentiality Agreement, the Company shall, and shall cause its Subsidiaries to, afford to the officers, employees and authorized Representatives of the Purchaser (including independent public accountants and attorneys) reasonable access during normal business hours, upon reasonable advance notice, to the offices, properties, assets and business, regulatory and financial records of the Company and its Subsidiaries and shall furnish to Buyer or such authorized representatives such additional information concerning the Company and its Subsidiaries (including any businesses to be acquired by the Company or its Subsidiaries) as shall be reasonably requested; provided, however, that the Company shall not be required to violate any obligation of confidentiality, order or applicable law to which it or its Subsidiaries is subject or to waive any privilege which any of them may possess in discharging its obligations pursuant to this Section 4.6(d) (but in such event the Company shall use commercially reasonable efforts to cooperate with the Purchaser to seek an appropriate remedy to permit the access contemplated hereby). Purchaser hereby acknowledges and agrees that any investigation pursuant to this Section 4.6(d) shall be conducted in such a manner as not to interfere unreasonably with the operations of the Company.

(e) For so long as the Purchaser Parties have the right, pursuant to Section 4.1(b), to nominate the Purchaser Nominee for election to the Board of Directors, the Company shall deliver to the Purchaser Parties through the Series C Director copies of all material, substantive materials provided to the Board at substantially the same time as provided to the directors of the Company.

Section 4.7 Antitakeover Provisions; Other Actions.

(a) Antitakeover Provisions. The Company and the Board of Directors shall (i) take all actions necessary so that no Antitakeover Provision becomes applicable to this Agreement or the Purchaser's acquisition, or the Company's issuance, of the Purchased Shares and the Conversion Shares in accordance with this Agreement and the Certificate of Designation, and (ii) if any such Antitakeover Provision becomes applicable thereto to any extent or in any regard, to take all actions necessary so that such transactions may be consummated as promptly as practicable on the terms required by, or provided for, in this Agreement, the Registration Rights Agreement and the Certificate of Designation, and otherwise to take all such other actions as are reasonably necessary to eliminate or minimize to the greatest extent possible the effects of any such Antitakeover Provision thereupon or upon the transactions contemplated thereby.

(b) Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall require or obligate the Sponsor and its respective Affiliates and any investment funds or investment vehicles affiliated with, or managed or advised by, the Sponsor or any portfolio company (as such term is commonly understood in the private equity industry) or investment of the Sponsor or of any such investment fund or investment vehicle to propose, negotiation, commit to, and/or effect, by consent decree, holder separate order, or otherwise, the sale, divestiture, transfer, license, disposition, or hold separate (through the establishment of a trust or otherwise) of such assets, properties, or businesses of the Sponsor or any of its respective Affiliates, Subsidiaries, investment funds, or portfolio companies, in order to avoid the entry of any decree, judgment, injunction (permanent or preliminary), or any other order that would make the transactions contemplated by this Agreement unlawful or would otherwise materially delay or prevent the consummation of the Contemplated Transactions.

Section 4.8 Voting Agreement. For so long as the Purchaser has the right to designate or nominate a director to the Board of Directors pursuant to Section 4.1, at each meeting of the stockholders of the Company and at every postponement or adjournment thereof, each Purchaser shall take such action as may be required so that all of the Purchased Shares, Conversion Shares or other shares of Common Stock owned, directly or indirectly, of record or beneficially by the Purchaser and entitled to vote at such meeting of stockholders are voted (a) in favor of each director nominated and recommended by the Board of Directors for election at any such meeting, (b) against any stockholder nomination for director that is not approved and recommended by the Board of Directors for election at any such meeting, (c) in favor of the Company's "say-on-pay" proposal and any proposal by the Company relating to equity compensation that has been approved by the Board of Directors or the Compensation Committee of the Board of Directors (or any successor committee, however denominated), (d) in favor of the Company's proposal for ratification of the appointment of the Company's independent registered public accounting firm and (e) in favor of the Company's proposal for amendment of its organizational documents in a manner that does not have an adverse effect on the holders of Series C Preferred Stock to increase number of authorized shares of capital stock of the Company, but no Purchaser shall be under any obligation to vote in the same manner as recommended by the Board of Directors or in any other manner, other than in its sole discretion, with respect to any other matter. In furtherance of the foregoing, for so long as the Purchaser has the right to designate or nominate a director to the Board of Directors pursuant to Section 4.1, the Purchaser shall take such action as may be required so that the Purchaser is present, in person or by proxy, at each meeting of the stockholders of the Company and at every postponement or adjournment thereof so that all of the Purchased Shares, Conversion Shares or other shares of Common Stock owned, directly or indirectly, of record or beneficially by the Purchaser may be counted for the purposes of determining the presence of a quorum and voted in accordance with the terms and conditions of this Section 4.8.

Section 4.9 Tax Matters.

(a) USRPHC Status. At the Purchaser's request from time to time while the Purchaser owns an equity interest in the Company, the Company shall use commercially reasonable efforts to determine as promptly as practicable whether it is a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code (a "USRPHC") and shall promptly notify the Purchaser in writing of its determination of its status as a USRPHC (and if in connection with a sale, shall promptly provide to the Purchaser a statement in accordance with Treasury Regulations Section 1.897-2(h)(1) where it determines the interest being sold is not a United States real property interest within the meaning of Section 897 of the Code).

(b) Purchase Price Allocation and Tax Treatment. The Company and Purchaser hereby agree that the Purchase Price payable hereunder shall be allocated among the Purchased Shares as follows: $250,000,000 shall be allocated to the Series C Preferred Stock and $25,000,000 shall be allocated to the Common Stock. The Company acknowledges and agrees that none of the Purchased Shares are "preferred stock" for purposes of Section 305 of the Code, and shall not take an inconsistent position with respect to the Purchased Shares for U.S. federal income tax purposes.

Section 4.10 Nasdaq Listing. Promptly following the execution of this Agreement, the Company shall apply to cause the Purchased Common Stock and Conversion Shares to be approved for listing on the Nasdaq Stock Market, subject to official notice of issuance. The Company shall use its reasonable best efforts to maintain the listing of all of the Conversion Shares upon each national securities exchange and automated quotation system, if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of the Conversion Shares. In accordance with the Certificate of Designation, the Company shall cause a number of shares of Common Stock equal to the total number of Conversion Shares to be authorized, reserved, and kept available at all times, free and clear of preemptive rights and all liens, to allow for full conversion of the Series C Preferred Stock in accordance with the terms thereof. From time to time following the Closing Date, the Company shall cause the number of shares of Common Stock issuable upon conversion or redemption of the then outstanding shares of Series C Preferred Stock to be approved for listing on the Nasdaq Stock Market. The Company shall pay all fees and expenses in connection with satisfying the obligations under this Section 4.10.

Section 4.11 State Securities Laws. The Company shall use its reasonable best efforts to (a) obtain all necessary permits and qualifications, if any, or secure an exemption therefrom, required by any state or country prior to the offer and sale of Common Stock and/or Series C Preferred Stock and (b) cause such authorization, approval, permit or qualification to be effective as of the Closing and as of any conversion of Series C Preferred Stock.

Section 4.12 Section 16b-3 Matters. If the Company becomes a party to a consolidation, merger or other similar transaction or otherwise or if there is any event or circumstance that may result in the Purchaser and each Permitted Transferee of the Purchaser to whom shares of Preferred Stock or Common Stock issued upon conversion of shares of Preferred Stock are transferred pursuant to Section 4.2 or Common Stock issued under this Agreement (the "Purchaser Parties"), their respective Affiliates and/or the Series C Director being deemed to have made a disposition or acquisition of the Preferred Stock or Common Stock issued or issuable upon conversion of shares of Common Stock or the Common Stock issued under this Agreement for purposes of Section 16 of the Exchange Act, and if the Series C Director is serving on the Board at such time or has served on the Board during the preceding six (6) months (i) the Board or a committee thereof composed solely of two or more "non-employee directors" as defined in Rule 16b-3 of the Exchange Act will pre-approve such acquisition or disposition of the Preferred Stock or Common Stock issued or issuable upon conversion of shares of Common Stock or the Common Stock issued under this Agreement for the express purpose of exempting the Purchaser Parties', their respective Affiliates' and the Series C Director's interests (for the Purchaser Parties and/or their respective Affiliates, to the extent such persons may be deemed to be "directors by deputization") in such transaction from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder and (ii) if the transaction involves (A) a merger or consolidation to which the Company is a party and the Common Stock is, in whole or in part, converted into or exchanged for equity securities of a different issuer, (B) a potential acquisition or deemed acquisition, or disposition or deemed disposition, by the Purchaser Parties, their respective Affiliates, and/or the Series C Director of equity securities of such other issuer or derivatives thereof and (C) an Affiliate or other designee of the Purchaser Parties or their respective Affiliates will serve on the board of directors (or its equivalent) of such other issuer pursuant to the terms of an agreement to which the Company is a party (or if the Purchaser Parties notify the Company of such service a reasonable time in advance of the closing of such transactions), then if the Company requires that the other issuer pre-approve any acquisition of equity securities or derivatives thereof for the express purpose of exempting the interests of any director or officer of the Company or any of its subsidiaries in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder, the Company shall require that such other issuer pre-approve any such acquisitions of equity securities or derivatives thereof for the express purpose of exempting the interests of the Purchaser Parties', their respective Affiliates' and the Series C Director (for the Purchaser Parties and/or their respective Affiliates, to the extent such persons may be deemed to be "directors by deputization" of such other issuer) in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder.

Section 4.13 Negative Covenants. Except as set forth on Section 4.13 of the Disclosure Letter or as contemplated by the Chart Purchase Agreement, from the date of this Agreement through the Closing, the Company and its Subsidiaries shall use their reasonable best efforts to operate their businesses in the ordinary course, and, without the prior written consent of the Purchaser Parties (which consent shall not be unreasonably withheld, conditioned or delayed), the Company shall not and shall cause its Subsidiaries not to:

(a) take any action that would require the consent of the Holders (as defined in the Certificate of Designation) pursuant to Section 9(a)(ii) of the Certificate of Designation;

(b) redeem, purchase, repurchase or otherwise acquire any of its outstanding shares of capital stock or other equity or voting interests, or any rights, warrants or options to acquire any shares of its capital stock or other equity or voting interests, except in the ordinary course of business pursuant to the terms of the Stock Plans or Company benefit plans;

(c) establish a record date for, declare, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of its capital stock or other equity or voting interests;

(d) split, combine, subdivide, recapitalize, reclassify or like change to any shares of its capital stock or other equity or voting interests;

(e) amend, supplement or otherwise change, or waive any provision of, the Company's Articles of Incorporation, Bylaws (except as and to the extent contemplated by Section 2.23(b) or Section 4.7(a)) or other organizational documents or make any material amendments or changes to the organizational documents of any of the Company's Subsidiaries or take or authorize any action to wind up its affairs or dissolve;

(f) make any material change in the Company's or its Subsidiaries' financial accounting principles, except as required by changes in GAAP (or any interpretation thereof) or in applicable Law; or

(g) agree, authorize or commit to do any of the foregoing.

Section 4.14 Sponsor.

(a) Notwithstanding anything to the contrary set forth in this Agreement, none of the terms or provisions of this Agreement (including, for the avoidance of doubt, Section 4.2 and Section 4.4) shall in any way limit the activities of The Blackstone Group Inc. (the "Sponsor") or any of its Affiliates (collectively, the "Sponsor Group"), other than the Purchaser Parties, in their businesses distinct from the corporate private equity business of Sponsor (the "Excluded Sponsor Parties"), so long as (i) no such Excluded Sponsor Party or any of its Representatives is acting on behalf of or at the direction of any Purchaser Party with respect to any matter that otherwise would violate any term or provision of this Agreement and (ii) no Confidential Information is made directly available to any Excluded Sponsor Party or any of its Representatives who are not involved in the corporate private equity business of Sponsor by or on behalf of any Purchaser Party or any of their Representatives, except with respect to any such Representative who is (x) compliance personnel for compliance purposes and (y) non-compliance personnel of Sponsor who are directors or officers of, or function in a similar oversight role at, such Affiliate as long as Confidential Information is not otherwise disclosed to such Affiliate.

(b) The Purchaser Parties and the Company hereby agree, notwithstanding anything to the contrary in any other agreement or at law or in equity, that, to the maximum extent permitted by law, when the Purchaser Parties take any action under this Agreement to give or withhold their consent, the Purchaser Parties shall have no duty (fiduciary or other) to consider the interests of the Company or the other stockholders of the Company and may act exclusively in their own interest; provided, however, that the foregoing shall in no way affect the obligations of the parties hereto to comply with the provisions of this Agreement. For the avoidance of doubt, the foregoing sentence shall not limit or otherwise affect the fiduciary duties of the Series C Director.

(c) The Purchaser Parties and the Company hereby agree and acknowledge that, subject to applicable law, the Series C Director may share Confidential Information with the Purchaser Parties.

Section 4.15 Use of Proceeds The Company shall use the proceeds from the issuance and sale of the Purchased Shares for working capital, inventory development, global infrastructure buildout and facilities expansion, sales and marketing and, potentially, acquisitions with strategic impact, including in connection with the acquisition contemplated by the Chart Purchase Agreement.

Section 4.16 Corporate Actions.

(a) If any occurrence since the date of this Agreement until the Closing would have resulted in an adjustment to the Conversion Price pursuant to the Certificate of Designation if the Series C Preferred Stock had been issued and outstanding since the date of this Agreement, the Company shall adjust the Conversion Price, effective as of the Closing, in the same manner as would have been required by the Certificate of Designation if the Series C Preferred Stock had been issued and outstanding since the date of this Agreement.

(b) The Company shall not adopt any stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan that prohibits the Purchaser Parties from taking any of the actions permitted by this Agreement under Section 4.2 or the Certificate of Designation.

(c) The Company shall, upon the Purchaser's reasonable request, reasonably consult with the Purchaser in connection with the matters set forth on Section 4.16(c) of the Disclosure Letter.

(d) Prior to the Closing. the Company shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), terminate or make any amendment, supplement, waiver or other modification to the purchase agreement entered into by the Company in connection with the acquisition of CryoPDP (such agreement, the "CryoPDP Purchase Agreement" and the transactions contemplated thereby, the "CryoPDP Acquisition") in a manner that would be materially adverse to the Purchaser; provided that the parties hereto agree that (x) any termination of the CryoPDP Purchase Agreement by mutual consent of the parties thereto shall be deemed materially adverse to the Purchaser and (y) any termination of the CryoPDP Purchase Agreement by the Company for failure of the CryoPDP Acquisition to close by the outside date of the CryoPDP Purchase Agreement or for material breach shall not be deemed to be materially adverse to the Purchaser.

Section 4.17 Chart Acquisition. At and prior to Closing, the Company shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), make any amendment, supplement, waiver or other modification to the Chart Purchase Agreement in a manner that would be materially adverse to the Purchaser. Without limiting the foregoing, the parties agree that it shall be materially adverse to Purchaser to make any amendment, supplement, waiver or other modification to the Chart Purchase Agreement to (a) increase the Purchase Price (as defined in the Chart Purchase Agreement), (b) modify or waive the conditions to the Closing (as defined in the Chart Purchase Agreement) set forth in Article IX of the Chart Purchase Agreement or (c) change in a manner adverse to the Company the scope or nature of the Assets or Liabilities to be transferred, assumed or retained in connection with the Acquisition. Upon the Purchaser's request to the Company in writing, the Company shall reasonably inform the Purchaser regarding the transactions contemplated by the Chart Acquisition Agreement, including the status thereof, the expected timing of the Closing, the anticipated date of the Closing and any developments that would reasonably be expected, individually or in the aggregate, to materially delay the Closing or make the Closing unlikely to occur. The Company shall provide the Purchaser with no less than ten (10) Business Days' written notice of the anticipated Closing Date. The Company will deliver or otherwise make available to the Purchaser (A) copies of the executed Chart Purchase Agreement (including any amendments, modifications, waivers or other changes thereto), (B) financial statements for the business being acquired and (C) any other information or diligence documents that the Purchaser reasonably requests. The Company shall make its and its Subsidiaries' relevant personnel and Representatives involved in the Acquisition available to the Purchaser and their Representatives upon reasonable request and during normal business hours to discuss the Acquisition.

Section 4.18 Corporate Opportunities. In recognition and anticipation that (1) certain directors, principals, officers, employees and/or other representatives of the Purchaser Parties and their Affiliates may serve as directors, officers or agents of the Company, (2) the Purchaser Parties and their Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Company, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Company, directly or indirectly, may engage or proposes to engage, and (3) members of the Board who are not employees of the Company or its subsidiaries (the "Non-Employee Directors") and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Company, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Company, directly or indirectly, may engage or proposes to engage, the provisions of this Section 4.18 are set forth to regulate and define the conduct of certain affairs of the Company with respect to certain classes or categories of business opportunities as they may involve the Purchaser Parties, the Non-Employee Directors or their respective Affiliates, as applicable, and the powers, rights, duties and liabilities of the Company and its directors, officers and stockholders in connection therewith. None of (1) the Purchaser Parties or any of their Affiliates, or (2) any Non-Employee Director (including any Non-Employee Director who serves as an officer of the Company in both his or her director and officer capacities) or his or her Affiliates (the Persons identified in (1) and (2) above being referred to, collectively, as "Identified Persons" and, individually, as an "Identified Person") shall, to the fullest extent permitted by law, have any duty to refrain from, directly or indirectly, (A) engaging in the same or similar business activities or lines of business in which the Company or any of its Affiliates now engages or proposes to engage or (B) otherwise competing with the Company or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Company or its stockholders or to any Affiliate of the Company for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Company hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity that may be a corporate opportunity for an Identified Person and the Company or any of its Affiliates. Subject to the following sentence, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity that may be a corporate opportunity for itself, herself or himself and the Company or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty to communicate or offer such transaction or other business opportunity to the Company or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Company or its stockholders or to any Affiliate of the Company for breach of any fiduciary duty as a stockholder, director or officer of the Company solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person or does not communicate information regarding such corporate opportunity to the Company. Notwithstanding the foregoing, the Company does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of this Company) if such opportunity is offered to such person solely in his or her capacity as a director or officer of the Company, and the prior sentence shall not apply to any such corporate opportunity. In addition to and notwithstanding the foregoing provisions of this Agreement or anything to the contrary in the Certificate of Designation, to the fullest extent permitted by law, a potential corporate opportunity shall not be deemed to be a corporate opportunity for the Company if it is a business opportunity that (1) the Company is neither financially or legally able, nor contractually permitted to undertake, (2) from its nature, is not in the line of the Company's business or is of no practical advantage to the Company, or (3) is one in which the Company has no interest or reasonable expectancy.

Section 4.19 Financing Cooperation. If requested by the Purchaser Parties, the Company will provide the following cooperation in connection with the Purchaser Parties obtaining any Permitted Loan following the Closing: (i) using good faith and commercially reasonable efforts to negotiate entering into an issuer agreement (an "Issuer Agreement") with each lender in customary form in connection with such transactions (which agreement may include, without limitation, agreements and obligations of the Company relating to procedures and specified time periods for effecting Transfers and/or conversions upon foreclosure, agreements to not intentionally hinder or delay exercises of remedies on foreclosure, acknowledgments regarding corporate policy, if applicable, certain acknowledgments regarding securities law status of the pledge arrangements and a specified list of Company Competitors) and subject to the consent of the Company (which will not be unreasonably withheld or delayed), with such changes thereto as are requested by such lender and customary for similar financings, (ii) using commercially reasonable efforts to (A) remove any restrictive legends on certificates representing pledged Series C Preferred Stock, Conversion Shares or Common Stock and depositing such pledged Series C Preferred Stock, Conversion Shares or Common Stock in book entry form on the books of The Depository Trust Company, when eligible to do so (for the avoidance of doubt, shares of Common Stock will not be considered so eligible prior to the date the lender has a valid one year "holding period" (as defined in Rule 144) in such shares of Common Stock) or (B) without limiting the generality of clause (A), if such Series C Preferred Stock or Common Stock is eligible for resale under Rule 144A, depositing such pledged Series C Preferred Stock or Common Stock in book entry form on the books of The Depository Trust Company or other depository with customary Rule 144A restrictive legends in lieu of the legends specified in Section 4.3 above, (iii) if so requested by such lender or counterparty, as applicable, (x) re-issuing the pledged Series C Preferred Stock, Conversion Shares or Common Stock in certificated form in the name of a Purchaser Party or its Affiliates and/or (y) re-registering the pledged Series C Preferred Stock, Conversion Shares or Common Stock in certificated form or in book-entry form, as so requested, in the name of the relevant lender, counterparty, custodian or similar party to a Permitted Loan, with respect to Permitted Loans solely as securities intermediary and only to the extent a Purchaser Party or its Affiliates continues to beneficially own such pledged Series C Preferred Stock, Conversion Shares or Common Stock, and (iv) such other cooperation and assistance as the Purchaser Parties may reasonably request (which cooperation and assistance, for the avoidance of doubt, shall not include any requirements that the Company deliver information, compliance certificates or any other materials typically provided by borrowers to lenders) that will not unreasonably disrupt the operation of the Company's business, in the cases of clauses (ii) and (iii), subject to receipt of customary legal opinions and certificates and the satisfaction of any relevant requirements of the Company's transfer agent. Notwithstanding anything to the contrary in the preceding sentence, the Company's obligation to deliver an Issuer Agreement is conditioned on (i) the relevant Purchaser Party certifying to the Company in writing that (A) the loan agreement with respect to which the Issuer Agreement is being delivered constitutes a Permitted Loan being entered into in accordance with this Agreement, such Purchaser Party has pledged Common Stock or the Series C Preferred Stock and/or the underlying shares of Common Stock as collateral to the lenders under such Permitted Loan and that the execution of such Permitted Loan and the terms thereof do not violate the terms of this Agreement, (B) to the extent applicable, whether the registration rights under the Registration Rights Agreement are being assigned to the lenders under that Permitted Loan and (C) such Purchaser Party acknowledges and agrees that the Company will be relying on such certificate when entering into the Issuer Agreement and any inaccuracy in such certificate will be deemed a breach of this Agreement and (ii) the Issuer Agreement containing customary representations, warranties and covenants for the benefit of the Company from the relevant Purchaser Party and the lender reasonably satisfactory to the Company (including, for the avoidance of doubt, an undertaking of the lender to sell any pledged Series C Preferred Stock and/or common stock in compliance with the Foreclosure Limitations). The Purchaser Parties acknowledge and agree that the statements and agreements of the Company in an Issuer Agreement are solely for the benefit of the applicable lenders party thereto and that in any dispute between the Company and the Purchaser Parties under this Agreement the Purchaser Parties shall not be entitled to use the statements and agreements of the Company in an Issuer Agreement against the Company.

ARTICLE V

CONDITIONS TO THE PARTIES' OBLIGATIONS

Section 5.1 Conditions of the Purchaser. The obligations of the Purchaser to consummate the transactions contemplated hereby to be consummated at the Closing are subject to the satisfaction or written waiver (to the extent any such waiver is permitted by applicable Law) by the Purchaser, on or prior to the Closing Date, of each of the following conditions precedent:

(a) Representations and Warranties. (i) Each of the representations and warranties of the Company contained in Article II of this Agreement (other than Sections 2.1 (*Organization and Power*), 2.2(a) (*Authorization*), 2.4(a) and (b) (*Authorized and Outstanding Stock*) and 2.22(b) (*Absence of Certain Changes*) of this Agreement) shall be true and correct on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct as of such date or time), except where the failure of such representations and warranties to be so true and correct, without giving effect to any qualification or limitation as to "materiality," "Material Adverse Effect" or similar qualifier set forth therein, has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (ii) each of the representations and warranties of the Company contained in Sections 2.1 (*Organization and Power*), 2.2(a) (*Authorization*) and 2.4(a) and (b) (*Authorized and Outstanding Stock*) of this Agreement shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct in all material respects as of such date or time) and (iii) the representations and warranties of the Company contained in Section 2.22(b) (*Absence of Certain Changes*) of this Agreement shall be true and correct on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date.

(b) Covenants. The Company shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by it at or prior to the Closing.

(c) Certificate of Designation. The Certificate of Designation shall have been duly filed with the Nevada Secretary of State and a certified copy shall have been delivered to the Purchaser.

(d) Chart Purchase Agreement. The Acquisition shall have been consummated or shall be consummated substantially simultaneously with the Closing on the terms and conditions contemplated by the Chart Purchase Agreement (subject to any amendments, supplements, waivers or other modifications but only to the extent permitted by Section 4.17 or otherwise consented to in writing by the Purchaser).

(e) VCOC Letter Agreement. The Purchaser shall have received a duly executed VCOC Letter Agreement, in the form of Exhibit E hereto,

(f) Officer's Certificate. The Purchaser shall have received a certificate signed on behalf of the Company by a duly authorized officer certifying to the effect that the conditions set forth in Section 5.1(a), (b) and (d) have been satisfied.

Section 5.2 Conditions of the Company. The obligations of the Company to consummate the transactions contemplated hereby are subject to the satisfaction or written waiver (to the extent any such waiver is permitted by applicable Law) by the Purchaser, on or prior to the Closing Date, of each of the following conditions precedent:

(a) Representations and Warranties; Performance. (i) Each of the representations and warranties of the Purchaser contained in Article III of this Agreement (other than Sections 3.1 (*Organization and Power*) and 3.2 (*Authorization, Etc*.)) shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct as of such date or time), except where the failure of such representations and warranties to be so true and correct, without giving effect to any qualification or limitation as to "materiality," "material adverse effect" or similar qualifier set forth therein, has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Purchaser's ability to consummate the transactions under this Agreement and the Registration Rights Agreement and (ii) each of the representations and warranties of the Purchaser contained in Sections 3.1 (*Organization and Power*) and 3.2 (*Authorization, Etc*.)) of this Agreement shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct as of such date or time).

(b) Covenants. The Purchaser shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by the Purchaser at or prior to the Closing.

(c) Consideration for the Securities. The Purchaser shall have paid the purchase price of the Purchased Shares to be purchased by such Purchaser in full at the Closing by wire transfer of immediately available funds to an account designated in writing by the Company.

(d) Certificate of Designation. The Certificate of Designation shall have been duly filed with the Nevada Secretary of State.

(e) Chart Purchase Agreement. The Acquisition shall have been consummated or shall be consummated substantially simultaneously with the Closing on the terms and conditions contemplated by the Chart Purchase Agreement (subject to any amendments, supplements, waivers or other modifications but only to the extent permitted by Section 4.17 or otherwise consented to in writing by the Purchaser).

(f) Officer's Certificate. The Company shall have received a certificate signed on behalf of the Purchaser by a duly authorized officer certifying to the effect that the conditions set forth in Sections 5.2(a) and (b) have been satisfied.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Survival. Except in the case of fraud, the representations and warranties of the parties contained in Article II and Article III hereof shall not survive and shall terminate automatically as of the Closing, and there shall be no liability in respect thereof, whether such liability has accrued prior to or after the Closing, on the part of any party or any of their respective Representatives. All other covenants and agreements of the parties contained herein shall survive the Closing in accordance with their terms.

Section 6.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when one or more counterparts have been signed by a party and delivered to the other parties. Copies of executed counterparts of signature pages to this Agreement may be transmitted by PDF (portable document format) or facsimile and such PDFs or facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

Section 6.3 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the state of New York (except to the extent that mandatory provisions of the laws of the State of Nevada are applicable), without giving effect to any choice of law or conflict of law rules or provisions (whether of the state of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of New York.

(b) Any dispute relating hereto shall be heard in the U.S. District Court for the Southern District of New York (and any federal appellate courts therefrom) (and to the extent such court declines jurisdiction, state court located in the Borough of Manhattan) (each a "Chosen Court" and collectively, the "Chosen Courts"), and the parties hereto agree to the exclusive jurisdiction and venue of the Chosen Courts. Such Persons further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the "Applicable Matters") shall be brought exclusively in a Chosen Court, and that any proceeding arising out of this Agreement or any other Applicable Matter shall be deemed to have arisen from a transaction of business in the State of New York, and each of the foregoing Persons hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such Person may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum.

(c) Such Persons further covenant not to bring a proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court.

(d) Process in any such proceeding may be served on any Person with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of process on such party as provided in Section 6.6 shall be deemed effective service of process on such Person.

(e) Waiver of Jury Trial. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

Section 6.4 Entire Agreement; No Third Party Beneficiary. This Agreement and the Registration Rights Agreement contain the entire agreement by and among the parties with respect to the subject matter hereof and all prior negotiations, writings and understandings relating to the subject matter of this Agreement. This Agreement is not intended to confer upon any Person not a party hereto (or their successors and permitted assigns) any rights or remedies hereunder.

Section 6.5 Expenses. All fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including accounting and legal fees shall be paid by the party incurring such expenses, except that, upon consummation of the Closing, the Company shall reimburse the Purchaser for all reasonable and documented costs and expenses, including legal fees, expenses, financial advisor fees and expenses, other professional fees and expenses, and all reasonable out-of-pocket due diligence expenses, in an aggregate amount not to exceed one million dollars ($1,000,000), incurred by the Purchaser in connection with the transactions contemplated by this Agreement.

Section 6.6 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier, one (1) Business Day after mailing; (c) if sent by e-mail transmission, with a copy sent on the same day in the manner provided in the foregoing clause (a) or (b), when transmitted and receipt is confirmed; and (d) if otherwise actually personally delivered, when delivered, provided, that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

If to the Company, to:

Cryoport, Inc.
112 Westwood Place, Suite 350
Brentwood, TN 37027
Attention: (i) Jerrell Shelton, President, Chief Executive Officer, and Chairman of the Board, (ii) Robert Stefanovich, Chief Financial Officer, Treasurer and Corporate Secretary, and (iii) Tony Ippolito, Vice President and General Counsel.
Email: JShelton@cryoport.com; RStefanovich@cryoport.com; and TIppolito@cryoport.com

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

Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626
Attention: Daniel Rees
Email: Daniel.Rees@lw.com

If to a Purchaser or to the Purchaser Representative, to:

BTO Freeze Parent L.P.
c/o The Blackstone Group Inc.
345 Park Avenue
New York, NY 10154
Attention: Ram Jagannath
Aaron Weiner
E-mail: Ram.Jagannath@Blackstone.com
Aaron.Weiner@blackstone.com

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

Simpson Thacher & Bartlett LLP
425 Lexington Ave
New York, New York 10017
E-mail: avernace@stblaw.com
Attention: Anthony F. Vernace

Section 6.7 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may be assigned (a) in connection with a Transfer to a Permitted Transferee permitted by Section 4.2(a)(i) and (b) as collateral security to any lender to the Purchaser; provided that the rights and obligations of the Purchaser Parties under Sections 4.1, 4.6 and 4.12 shall not be assignable other than to a member of the Sponsor Group that becomes a Purchaser Party pursuant to the terms of this Agreement. No other assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other parties hereto. Any purported assignment or delegation in violation of this Agreement shall be null and void ab initio.

Section 6.8 Headings. The Section, Article and other headings contained in this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement.

Section 6.9 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by each party hereto. Any party hereto may, only by an instrument in writing, waive compliance by any other party or parties hereto with any term or provision hereof on the part of such other party or parties hereto to be performed or complied with. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any party hereto of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

Section 6.10 Interpretation; Absence of Presumption.

(a) For the purposes hereof: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (ii) the terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits) and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits, and Schedules to this Agreement unless otherwise specified; (iii) the word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified; and (iv) the word "or", "any" or "either" shall not be exclusive. References to a Person are also to its permitted assigns and successors. When calculating the period of time between which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded (and unless, otherwise required by Law, if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day).

(b) With regard to each and every term and condition of this Agreement and any and all agreements and instruments subject to the terms hereof, the parties hereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties hereto desire or are required to interpret or construe any such term or condition or any agreement or instrument subject hereto, no consideration will be given to the issue of which party hereto actually prepared, drafted or requested any term or condition of this Agreement or any agreement or instrument subject hereto.

Section 6.11 Severability. Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof, provided, however, that the parties will attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.

Section 6.12 Specific Performance. The parties hereto agree that irreparable damage could occur and that the a party may not have any adequate remedy at law in the event that any of the provisions of this Agreement are not performed in accordance with their terms or were otherwise breached. Accordingly, each party shall without the necessity of proving the inadequacy of money damages or posting a bond be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms, provisions and covenants contained therein (including, for the avoidance of doubt, the right of the Company to specifically enforce the obligation of the Purchaser to cause the Equity Commitment to be funded and the purchase of the Purchased Shares to be consummated on the terms and subject to the conditions set forth in this Agreement), this being in addition to any other remedy to which they are entitled at law or in equity.

Section 6.13 Public Announcement. Subject to each party's disclosure obligations imposed by applicable law or the rules of any stock exchange upon which its securities are listed, each of the parties hereto will cooperate with each other in the development and distribution of all news releases and other public information disclosures with respect to this Agreement and any of the transactions contemplated by this Agreement, and neither the Company nor any Purchaser will make any such news release or public disclosure without first consulting with the other, and, in each case, also receiving the other's consent (which shall not be unreasonably withheld or delayed) and each party shall coordinate with the party whose consent is required with respect to any such news release or public disclosure. Notwithstanding the foregoing, this Section 6.13 shall not apply to any press release or other public statement made by the Company or a Purchaser (a) that is consistent with prior disclosure and does not contain any information relating to the transactions that has not been previously announced or made public in accordance with the terms of this Agreement or (b) is made to its auditors, attorneys, accountants, financial advisors, limited partners or other Permitted Transferees. Notwithstanding anything to the contrary in this Agreement or the Confidentiality Agreement, in no event shall either this Section 6.13 or any provision of the Confidentiality Agreement limit disclosure by any Purchaser Party and their respective Affiliates of ordinary course communications regarding this Agreement and the transactions contemplated by this Agreement to its existing or prospective general and limited partners, equityholders, members, managers and investors of any Affiliates of such Person, including disclosing information about the transactions contemplated by this Agreement on their websites in the ordinary course of business consistent with past practice.

Section 6.14 Purchaser Representative. Each Purchaser Party hereby consents to and authorizes (a) the appointment of BTO Freeze Parent L.P. as the Purchaser Representative hereunder (the "Purchaser Representative") and as the attorney-in-fact for and on behalf of the Purchaser Party, and (b) the taking by the Purchaser Representative of any and all actions and the making of any decisions required or permitted by, or with respect to, this Agreement and the transactions contemplated hereby, including (i) the exercise of the power to agree to execute any consents under this Agreement and (ii) to take all actions necessary in the judgment of the Purchaser Representative for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Agreement and the transactions contemplated hereby. Each Purchaser Party shall be bound by the actions taken by the Purchaser Representative exercising the rights granted to it by this Agreement, and the Company shall be entitled to rely on any such action or decision of the Purchaser Representative. If the Purchaser Representative shall resign or otherwise be unable to fulfill its responsibilities hereunder, the Purchaser Parties shall appoint a new Purchaser Representative as soon as reasonably practicable by written consent of holders of a majority of the then outstanding Series C Preferred Stock and/or shares of Common Stock that were issued upon conversion of shares of Series C Preferred Stock beneficially owned by the Purchaser or Purchaser Parties that are successors or assigns of the Purchaser by sending notice and a copy of the duly executed written consent appointing such new Purchaser Representative to the Company.

Section 6.15 Non-Recourse. Any claim or cause of action based upon, arising out of, or related to this Agreement or the Equity Commitment Letter may only be brought against the entities that are expressly named as parties hereto or thereto (the "Contract Parties") and then only with respect to the specific obligations of such party and subject to the terms, conditions and limitations set forth herein or therein. No Person other than the Contract Parties, including no member, partner, stockholder, unitholder, Affiliate or Representative thereof, nor any member, partner, stockholder, unitholder, Affiliate or Representative of any of the foregoing, shall have any liability (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or the Equity Commitment Letter or based on, in respect of, or by reason of this Agreement or the Equity Commitment Letter or their respective negotiation, execution, performance, or breach; and, to the maximum extent permitted by law, each of the Contract Parties hereby waives and releases all such liabilities, claims, causes of action, and obligations against any such third Person.

Section 6.16 Further Assurances. From the date hereof until the Closing, without further consideration, the Company and the Purchaser shall use their respective reasonable best efforts to take, or cause to be taken, all actions necessary, appropriate or advisable to consummate the transactions contemplated by this Agreement, the Registration Rights Agreement, the Certificate of Designation and any and all other agreements or instruments executed and delivered to the Purchaser by the Company hereunder or thereunder, as applicable.

ARTICLE VII

TERMINATION

Section 7.1 Termination. This Agreement may be terminated at any time prior to Closing:

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

(b) by either the Company or Purchaser, if (i) any Governmental Entity with lawful jurisdiction shall have issued a final order, decree or ruling or taken any other final action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action is or shall have become final and nonappealable or (ii) the Chart Purchase Agreement is terminated for any reason;

(c) by notice given by the Company to the Purchaser if there have been one or more inaccuracies in or breaches of one or more representations, warranties, covenants or agreements made by the Purchaser in this Agreement such that the conditions in Section 5.2(a) or Section 5.2(b) would not be satisfied and, if capable of being cured, which have not been cured by the Purchaser thirty (30) days after receipt by the Purchaser of written notice from the Company requesting such inaccuracies or breaches to be cured; provided, however, that the Company is not then in breach of any of its obligations hereunder; or

(d) by notice given by the Purchaser to the Company, if there have been one or more inaccuracies in or breaches of one or more representations, warranties, covenants or agreements made by the Company in this Agreement such that the conditions in Section 5.1(a) or Section 5.1(b) would not be satisfied and, if capable of being cured, which have not been cured by the Company within thirty (30) days after receipt by the Company of written notice from the Purchaser requesting such inaccuracies or breaches to be cured; provided, however, that the Purchaser is not then in breach of any of its obligations hereunder.

Section 7.2 Certain Effects of Termination. In the event that this Agreement is terminated in accordance with Section 7.1, neither party (nor any of its Affiliates) shall have any liability or obligation to the other (or any of its Affiliates) under or in respect of this Agreement, except to the extent of (a) any liability arising from any breach by such party of its obligations pursuant to this Agreement arising prior to such termination, and (b) any actual and intentional fraud or intentional or willful breach of this Agreement. In the event of any such termination, this Agreement shall become void and have no effect, and the transactions contemplated hereby shall be abandoned without further action by the parties, in each case, except (x) as set forth in the preceding sentence and (y) that the provisions of Section 4.6 (*Confidentiality*), Sections 6.2 to 6.4 (*Counterparts, Governing Law, Entire Agreement*) and Sections 6.6 through 6.15 (*Notices, Successors and Assigns, Headings, Amendments and Waivers, Interpretations; Absence of Presumption, Severability, Specific Performance and Public Announcement*, *Purchaser Representative*, *Non-Recourse*) shall survive the termination of this Agreement.

(Signature page follows)

The parties have caused this Securities Purchase Agreement to be executed as of the date first written above.

CRYOPORT, INC.

By: /s/ Jerrell Shelton
Name: Jerrell Shelton
Title: President and CEO

[Signature page to Securities Purchase Agreement]

Purchaser

BTO FREEZE PARENT L.P.

By: BTO Freeze Parent GP LLC, its general partner

By: /s/ Aaron Weiner
Name: Aaron Weiner
Title: Vice President

[Signature page to Securities Purchase Agreement]

EXHIBIT A

DEFINED TERMS

1. The following capitalized terms have the meanings indicated:

"Affiliate" of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person; provided, however, that (i) the Company and its Subsidiaries, on the one hand, and any Purchaser Party or any of its Affiliates, on the other hand, shall not be deemed to be Affiliates, (ii) "portfolio companies" (as such term is customarily used among institutional investors) in which any Purchaser Party or any of its Affiliates has an investment (whether as debt or equity) shall not be deemed an Affiliate of such Purchaser Party and (iii) the Excluded Sponsor Parties shall not be deemed to be Affiliates of any Purchaser Party, the Company or any of the Company's Subsidiaries.

"Antitakeover Provisions" means the provisions of any rights plan or agreement, poison pill (including any distribution under a rights plan or agreement), or any control share acquisition, business combination, interested stockholder, fair price, moratorium or similar anti-takeover provision under the Articles, the Bylaws, or applicable law (including the "acquisition of controlling interest" statutes codified in Nevada Revised Statutes 78.378 through 78.3793, inclusive, and the "combinations with interested stockholders" statutes codified in Nevada Revised Statutes 78.411 through 78.444, inclusive).

"Articles of Incorporation" means the Company's Amended and Restated Articles of Incorporation, as the same have been and may be further amended or restated.

"Board of Directors" means the Company's board of directors.

"Business Day" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

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

"Bylaws" means the Amended and Restated Bylaws of the Company, adopted as of February 8, 2016, as the same may be further amended or restated.

"Company Competitor" means, as of any date of determination, any Person (including such Person's Affiliates) engaged in the business of temperature-controlled supply chain solutions for the life sciences industry; provided however, that for the avoidance of doubt, a private equity fund, financial institution, asset management firm or similar firm shall not be considered a "Company Competitor" but its portfolio companies, if any, that own material interests in temperature-controlled supply chain solution businesses would be considered a "Company Competitor".

"Confidential Information" means information regarding the Company or its Subsidiaries and the Cryo Business furnished by or on behalf of the Company, directly or indirectly, to the Purchaser or its Representatives, together with all analyses, compilations, forecasts, studies or other documents prepared by the Purchaser or its Representatives which contain or otherwise reflect such information. "Confidential Information" shall not include such portions of the Confidential Information that (a) are or become generally available to the public other than as a result of the Purchaser's or its Affiliates' disclosure in violation of this Agreement, (b) become available to the Purchaser or its Affiliates on a non-confidential basis from a source other than the Company or its Subsidiaries, (c) was already in the Purchaser's or its Affiliate's possession prior to the date of this Agreement and which was not obtained from the Company or its Subsidiaries or (d) are independently developed by the Purchaser Parties or their respective Affiliates or Representatives without reference to the Confidential Information.

"Control" (including its correlative meanings "under common Control with" and "Controlled by") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise.

"Convertible Senior Notes" means the Company's 3.00% convertible senior notes due in 2025.

"Environmental Permit" means any permit, license, certificate, approval or other authorization under any applicable Requirements of Environmental Law.

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

"ERISA Documents" means all material "employment benefit plans" as defined in Section 3(3) of ERISA that are maintained or sponsored by the Company or its Subsidiaries for the benefit of their respective current or former employees or with respect to which the Company or its Subsidiaries have any liability.

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

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

"Governmental Entity" means any supranational, national, state, municipal, local or foreign government, any court, tribunal, arbitrator, administrative agency, commission or other governmental official, authority or instrumentality.

"Government Official" means any officer or employee of a foreign governmental authority or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such foreign governmental authority or department, agency, or instrumentality, or for or on behalf of any such public international organization, or any political party, party official, or candidate thereof, excluding officials of the governments of the United States, the several states thereof, any local subdivision of any of them or any agency, department or unit of any of the foregoing.

"Hazardous Substance" means any waste, substance, product or material defined or regulated as "hazardous" or "toxic" or as a "pollutant" or "contaminant", or words of similar meaning, by any applicable Requirements of Environmental Law," including petroleum and any fraction thereof, and any biomedical or radioactive materials and waste.

"Investment Company Act" mean the Investment Company Act of 1940, as amended.

"Material Adverse Effect" means any event, change, development, circumstance, condition, state of facts or occurrence that individually or in the aggregate is, or would reasonably be expected to be, materially adverse to (x) the condition (financial or otherwise), assets, properties, or liabilities of the Company and its Subsidiaries (taken as a whole) or results of operations of the Company and its Subsidiaries (taken as a whole), or (y) the ability of the Company to perform its obligations or consummate the transactions contemplated hereby, but shall exclude any prospects and shall also exclude any event, change, development, circumstance, condition, state of facts or occurrence to the extent resulting or arising from: (a) any change or prospective change in any applicable law or GAAP or interpretation thereof; (b) any change in general economic conditions in the industries or markets in which the Company and its Subsidiaries operate or affecting the United States of America or any foreign economies in general; (c) any change made by any Governmental Entity that is generally applicable to the industries or markets in which the Company and its Subsidiaries operate; (d) the announcement of this Agreement and/or the consummation of the transactions contemplated hereby; (e) any action that is consented to or requested by the Purchaser in writing; (f) any action expressly required by, or the failure to take any action expressly prohibited by this Agreement; (g) any national or international political or social conditions, including the engagement by the United States of America or any foreign government in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States of America or any foreign government or any of their respective territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States of America or any foreign government; (h) any acts of God, including any earthquakes, hurricanes, tornados, floods, tsunamis or other natural disasters, or any other damage to or destruction of assets caused by casualty; (i) any epidemic, pandemic, disease outbreak (including, for the avoidance of doubt, COVID-19) or other health crisis or public health event; and (j) any failure of the Company and its Subsidiaries to meet internal or published projections, estimates or forecasts of revenues, earnings or other measures of financial or operating performance for any period; provided, that the underlying causes of such failure (subject to the other provisions of this definition of "Material Adverse Effect") shall not be excluded; provided, however, that in the case of each of clauses (a), (b), (c) and (g) of the foregoing, any such event, change, circumstance or occurrence shall not be excluded to the extent that it has or would reasonably be expected to have a disproportionate adverse effect on the condition (financial or otherwise), assets, properties, or liabilities of the Company and its Subsidiaries (taken as a whole), or results of operations of the Company and its Subsidiaries (taken as a whole) relative to other companies operating in the same industry in which the Company and its Subsidiaries operates.

"Permitted Transferee" means, with respect to any Person, (i) any Affiliate of such Person, (ii) any successor entity of such Person and (iii) with respect to any Person that is an investment fund, vehicle or similar entity, any other investment fund, vehicle or similar entity of which such Person or an Affiliate, advisor or manager of such Person serves as the general partner, managing member, manager or advisor.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or a government or agency or political subdivision thereof.

"Registration Rights Agreement" means the Registration Rights Agreement between the Company and the Purchaser in the form attached to the Agreement as Exhibit C, as it may be amended or modified in accordance with the terms thereof.

"Related Party" means, with respect to any Person, such Person's Affiliates and such Person's and its Affiliates' respective former, current or future direct or indirect equity holders, controlling Persons, stockholders, directors, officers, employees, members, managers, agents, general or limited partners, successors, partners or Representatives.

"Representatives" means a Persons' Affiliates, employees, agents, consultants, accountants, attorneys or financial advisors.

"Requirements of Environmental Law" means all laws (including the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, the Clean Air Act, and any state analogues of any of the foregoing), common law, statutes, ordinances, codes, rules, regulations, orders or similar requirements of any Governmental Entity which relate to (a) pollution, protection or clean-up of the environment, including air, surface water, ground water or land; (b) solid, gaseous or liquid waste or the generation, recycling, reclamation, release, threatened release, treatment, storage, disposal or transportation of harmful or deleterious substances; (c) exposure of Persons or property to harmful or deleterious substances; or (d) the manufacture, presence, processing, distribution in commerce, use, discharge, releases, threatened releases, emissions or storage of harmful or deleterious substances into the environment.

"Restricted Securities" means Purchased Shares or Conversion Shares required to bear the legend set forth in Section 4.3(a) under the applicable provisions of the Securities Act.

"SEC" means the Securities and Exchange Commission.

"SEC Documents" means all reports, schedules, registration statements, proxy statements and other documents (including all amendments, exhibits and schedules thereto) filed by the Company with the SEC.

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

"Stock Plans" means the Cryoport, Inc. 2018 Omnibus Equity Incentive Plan, the 2015 Omnibus Equity Incentive Plan, the Cryoport, Inc. 2011 Stock Incentive Plan, as amended and restated, the Cryoport, Inc. 2009 Stock Incentive Plan and the 2002 Stock Incentive Plan.

"Subsidiary" means, when used with reference to a party, any corporation or other organization, whether incorporated or unincorporated, of which such party or any other Subsidiary of such party is a general partner or serves in a similar capacity, or, with respect to such corporation or other organization, at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries.

"Tax" and "Taxes" means all federal, state, local and foreign taxes (including, without limitation, income, franchise, property, sales, withholding, payroll and employment taxes), assessments, fees or other charges imposed by any Governmental Entity, including any interest, additions to tax or penalties applicable thereto.

"Tax Return" means any return, report or similar filing (including the attached schedules) filed or required to be filed with respect to Taxes (and any amendments thereto), including any information return, claim for refund or declaration of estimated Taxes.

"Transfer" means any direct or indirect (a) sale, transfer, hypothecation, assignment, gift, bequest or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by realization upon any lien or by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings) or (b) grant of any option, warrant or other right to purchase or the entry into any hedge, swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of Common Stock; provided, however, that, notwithstanding anything to the contrary in this Agreement, a Transfer shall not include (i) the conversion of one or more shares of Series C Preferred Stock into shares of Common Stock pursuant to the Certificate of Designation, (ii) the redemption, repurchase or other acquisition of Common Stock or Series C Preferred Stock by the Company, or (iii) the direct or indirect transfer of any limited partnership interests or other equity interests in a Purchaser Party (or any direct or indirect parent entity of such Purchaser Party) (provided that if any transferor or transferee referred to in this clause (iii) ceases to be controlled (directly or indirectly) by the Person (directly or indirectly) controlling such Person immediately prior to such transfer, such event shall be deemed to constitute a "Transfer"). The term "Transferred" shall have a correlative meaning.

"Treasury Regulations" means the U.S. Treasury regulations promulgated under the Code, as amended.

"VCOC Letter Agreement" means that certain letter agreement, the form of which is attached as Exhibit E.

2. The following terms are defined in the Sections of the Agreement indicated:

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Exhibit B

Form of Certificate of Designation

(see attached)

Form Final

Form of

Cryoport, Inc.

Certificate of Designation

4.0% Series C Convertible Preferred Stock

[*date*]

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Certificate of Designation

4.0% Series C Convertible Preferred Stock

On [*date*], the Board of Directors of Cryoport, Inc., a Nevada corporation (the "**Company**"), adopted the following resolution designating and creating, out of the authorized and unissued shares of preferred stock of the Company, 250,000 authorized shares of a series of preferred stock of the Company titled the "4.0% Series C Convertible Preferred Stock":

RESOLVED that, pursuant to the authority of the Board of Directors pursuant to the Articles of Incorporation and applicable law, a series of preferred stock of the Company titled the "4.0% Series C Convertible Preferred Stock," and having a par value of $0.001 per share and an initial number of authorized shares equal to two hundred fifty thousand (250,000), is hereby designated and created out of the authorized and unissued shares of preferred stock of the Company, which series has the rights, designations, preferences, voting powers and other provisions set forth below:

SECTION 1. DEFINITIONS.

"**Affiliate**" of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person; provided, however, that (i) the Company and its Subsidiaries, on the one hand, and any Purchaser Party or any of its Affiliates, on the other hand, shall not be deemed to be Affiliates, (ii) "portfolio companies" (as such term is customarily used among institutional investors) in which any Purchaser Party or any of its Affiliates has an investment (whether as debt or equity) shall not be deemed an Affiliate of such Purchaser Party and (iii) the Excluded Sponsor Parties (as defined in the Purchase Agreement) shall not be deemed to be Affiliates of any Purchaser Party, the Company or any of the Company's Subsidiaries.

"**Articles of Incorporation**" means the Company's amended and restated Articles of Incorporation, as the same have been and may be further amended or restated.

"**Board of Directors**" means the Company's board of directors or a committee of such board duly authorized to act with the authority of such board.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Bylaws**" means the Amended and Restated Bylaws of the Company, adopted as of February 8, 2016, as the same may be further amended or restated.

"**Capital Stock**" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

"**Certificate**" means a Physical Certificate or an Electronic Certificate.

"**Certificate of Designation**" means this Certificate of Designation, as amended from time to time.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Common Stock**" means the common stock, $0.001 par value per share, of the Company, subject to **Section 10(i)**.

"**Common Stock Change Event**" has the meaning set forth in **Section 10(i)(i)**.

"**Common Stock Liquidity Conditions**" will be satisfied with respect to a Mandatory Conversion or Redemption if:

(a) the offer and sale of such share of Common Stock by such Holder are registered pursuant to an effective registration statement under the Securities Act and such registration statement is reasonably expected by the Company to remain effective and usable, by the Holder to sell such share of Common Stock, continuously during the period from, and including, the date the related Mandatory Conversion Notice or Redemption Notice Date, as applicable, is sent to, and including, the one (1) year anniversary after the date such share of Common Stock is issued;

(b) each share of Common Stock referred to in **clause (a)** above (i) will, when issued and when sold or otherwise transferred pursuant to the registration statement referred to in such **clause**) (1) be admitted for book-entry settlement through The Depository Trust Company with an "unrestricted" CUSIP number; and (2) not be evidenced by any Certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (ii) will, when issued, be listed and admitted for trading, without suspension or material limitation on trading, on any of The New York Stock Exchange, The NYSE American, The NASDAQ Capital Market, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors);

(c) (i) the Company has not received any written threat or notice of delisting or suspension by the applicable exchange referred to in **clause (b)(ii)** above with a reasonable prospect of delisting, after giving effect to all applicable notice and appeal periods; and (ii) no such delisting or suspension is reasonably likely to occur or is pending based on the Company falling below the minimum listing maintenance requirements of such exchange; and

(d) the conversion of all shares of Convertible Preferred Stock pursuant to such Mandatory Conversion or that are subject to such Redemption, as applicable, would not be limited or otherwise restricted by **Section 10(h)**.

"**Common Stock Participating Dividend**" has the meaning set forth in **Section 5(c)(i)**.

"**Company**" means Cryoport, Inc., a Nevada corporation.

"**Continuing Share Reserve Requirement**" means, as of any time, a number of shares of Common Stock equal to the product of (a) two (2); and (b) the number of shares of Common Stock that would be issuable (without regard to **Section 10(h)**) upon conversion of all Convertible Preferred Stock outstanding as of such time (assuming such conversion occurred as of such time).

"**Control**" (including its correlative meanings "under common Control with" and "Controlled by") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise.

"**Conversion Agent**" has the meaning set forth in **Section 3(f)(i)**.

"**Conversion Share**" means any share of Common Stock issued or issuable upon conversion of any Convertible Preferred Stock.

"**Conversion Consideration**" means, with respect to the conversion of any Convertible Preferred Stock, the type and amount of consideration payable to settle such conversion, determined in accordance with **Section 10**.

"**Conversion Date**" means an Optional Conversion Date or a Mandatory Conversion Date.

"**Conversion Price**" initially means $38.6152 per share of Common Stock; *provided*, *however*, that the Conversion Price is subject to adjustment pursuant to **Sections 10(f)** and **10(g)**. Each reference in this Certificate of Designation to the Conversion Price as of a particular date without setting forth a particular time on such date will be deemed to be a reference to the Conversion Price immediately before the Close of Business on such date.

"**Convertible Preferred Stock**" has the meaning set forth in **Section 3(a)**.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "CYRX <EQUITY> AQR" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one (1) share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm the Company selects). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**Deficit Shares**" has the meaning set forth in **Section 10(h)(i)(1)**.

"**Dividend**" means any Regular Dividend or Participating Dividend.

"**Dividend Junior Stock**" means any class or series of the Company's stock, the terms of which would result in such class or series ranking junior to the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). Dividend Junior Stock includes the Common Stock. For the avoidance of doubt, Dividend Junior Stock will not include any securities of the Company's Subsidiaries.

"**Dividend Parity Stock**" means any class or series of the Company's stock (other than the Convertible Preferred Stock), the terms of which would result in such class or series ranking equally with the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). For the avoidance of doubt, Dividend Parity Stock includes the Series A Preferred Stock and the Series B Preferred Stock, but does not include any securities of the Company's Subsidiaries.

"**Dividend Payment Date**" means each Regular Dividend Payment Date with respect to a Regular Dividend and each date on which any declared Participating Dividend is scheduled to be paid on the Convertible Preferred Stock with respect to a Participating Dividend.

"**Dividend Senior Stock**" means any class or series of the Company's stock, the terms of which would result in such class or series ranking senior to the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). For the avoidance of doubt, Dividend Senior Stock will not include any securities of the Company's Subsidiaries.

"**Electronic Certificate**" means any electronic book entry maintained by the Transfer Agent that evidences any share(s) of Convertible Preferred Stock.

"**Equity Treatment Limitation**" has the meaning set forth in **Section 10(h)(i)(1)**.

"**Ex-Dividend Date**" means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

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

"**Expiration Date**" has the meaning set forth in **Section 10(f)(i)(2)**.

"**Expiration Time**" has the meaning set forth in **Section 10(f)(i)(2)**.

"**Final Fundamental Change Notice**" has the meaning set forth in **Section 8(f)**.

"**Fundamental Change**" means any of the following events, whether in a single transaction or a series of related transactions:

(a) a "person" or "group" (within the meaning of Section 13(d) and 14(d) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or their respective employee benefit plans, files any report with the SEC indicating that such person or group, has become the direct or indirect "beneficial owner" (as defined below) of shares of the Common Stock representing more than fifty percent (50%) of the voting power of all of the Company's Common Stock in a transaction or series of related transactions approved by the Board of Directors;

(b) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property; *provided*, *however*, that any merger, consolidation, share exchange, combination, reclassification or recapitalization of the Company pursuant to which the Persons that directly or indirectly "beneficially owned" (as defined below) all classes of the Company's common equity immediately before such transaction directly or indirectly "beneficially own," immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction, will be deemed not to be a Fundamental Change pursuant to this **clause (b)**; or

(c) shares of Common Stock or shares of any other Capital Stock into which the Convertible Preferred Stock is convertible are not listed for trading on any United States national securities exchange or cease to be traded in contemplation of a de-listing, in each case, as a result of or in connection with a transaction or series of related transactions (or any filings or other actions related thereto) that have been approved by the Board of Directors (other than as a result of a transaction described in clause (b) above).

For the purposes of this definition, (x) any transaction or event described in both **clause (a)** and in **clause (b)(i)** or **(ii)** above (without regard to the proviso in **clause (b)**) will be deemed to occur solely pursuant to **clause (b)** above (subject to such proviso); and (y) whether a Person is a "**beneficial owner**", whether shares are "**beneficially owned**", and percentage beneficial ownership, will be determined in accordance with Rules 13d-3 and 13d-5 under the Exchange Act.

"**Fundamental Change Repurchase Date**" means the date fixed, pursuant to **Section 8(c)**, for the repurchase of any Convertible Preferred Stock by the Company pursuant to a Repurchase Upon Fundamental Change.

"**Fundamental Change Repurchase Notice**" means a notice (including a notice substantially in the form of the "Fundamental Change Repurchase Notice" set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 8(g)(i)** and **Section 8(g)(ii)**.

"**Fundamental Change Repurchase Price**" means the cash price payable by the Company to repurchase any share of Convertible Preferred Stock upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 8(d)**.

"**Fundamental Change Repurchase Right**" has the meaning set forth in **Section 8(a)**.

"**Holder**" means a person in whose name any Convertible Preferred Stock is registered on the Registrar's books.

"**Initial Issue Date**" means [*closing date*].

"**Initial Fundamental Change Notice**" has the meaning set forth in **Section 8(e)**.

"**Initial Liquidation Preference**" means one thousand dollars ($1,000.00) per share of Convertible Preferred Stock.

"**Initial Share Reserve Requirement**" means a number of shares of Common Stock equal to the product of (a) two (2); and (b) the number of shares of Common Stock that would be issuable (without regard to **Section 10(h)**) upon conversion of all Convertible Preferred Stock outstanding as of the Initial Issue Date (assuming such conversion occurred on the Initial Issue Date).

"**Last Reported Sale Price**" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of the Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm the Company selects.

"**Liquidation Junior Stock**" means any class or series of the Company's stock, the terms of which would result in such class or series ranking junior to the Convertible Preferred Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up. Liquidation Junior Stock includes the Common Stock. For the avoidance of doubt, Liquidation Junior Stock will not include any securities of the Company's Subsidiaries.

"**Liquidation Parity Stock**" means any class or series of the Company's stock (other than the Convertible Preferred Stock), the terms of which would result in such class or series ranking equally with the Convertible Preferred Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up. For the avoidance of doubt, Liquidation Parity Stock includes the Series A Preferred Stock and the Series B Preferred Stock, but does not include any securities of the Company's Subsidiaries.

"**Liquidation Preference**" means, with respect to the Convertible Preferred Stock, an amount initially equal to the Initial Liquidation Preference per share of Convertible Preferred Stock; *provided*, *however*, that the Liquidation Preference is subject to adjustment pursuant to **Section 5(b)(i)**.

"**Liquidation Senior Stock**" means any class or series of the Company's stock, the terms of which would result in such class or series ranking senior to the Convertible Preferred Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up. For the avoidance of doubt, Liquidation Senior Stock will not include any securities of the Company's Subsidiaries.

"**LTM EBITDA**" means, as of any date, the net income before interest, taxes, depreciation and amortization of the Company, calculated in a manner consistent with the Company's use of EBITDA in its SEC Documents (as defined in the Purchase Agreement), for the twelve (12) month period ending on the calendar month end immediately preceding such date.

"**Mandatory Conversion**" has the meaning set forth in **Section 10(c)(i)**.

"**Mandatory Conversion Date**" means a Conversion Date designated with respect to any Convertible Preferred Stock pursuant to **Section 10(c)(i)** and **10(c)(iii)**.

"**Mandatory Conversion Notice**" has the meaning set forth in **Section 10(c)(iv)**.

"**Mandatory Conversion Notice Date**" means, with respect to a Mandatory Conversion, the date on which the Company sends the Mandatory Conversion Notice for such Mandatory Conversion pursuant to **Section 10(c)(iv)**.

"**Mandatory Conversion Right**" has the meaning set forth in **Section 10(c)(i)**.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Number of Reserved Shares**" means, as of any time, the number of shares of Common Stock that, at such time, the Company has reserved (out of its authorized but unissued shares of Common Stock that are not reserved for any other purpose) for delivery upon conversion of the Convertible Preferred Stock.

"**Officer**" means the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of the Company.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Optional Conversion**" means the conversion of any Convertible Preferred Stock other than a Mandatory Conversion.

"**Optional Conversion Date**" means, with respect to the Optional Conversion of any Convertible Preferred Stock, the first Business Day on which the requirements set forth in **Section 10(d)(ii)** for such conversion are satisfied.

"**Optional Conversion Notice**" means a notice substantially in the form of the "Optional Conversion Notice" set forth in **Exhibit A**.

"**Participating Dividend**" has the meaning set forth in **Section 5(c)(i)**.

"**Paying Agent**" has the meaning set forth in **Section 3(f)(i)**.

"**Person**" or "**person**" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate "person" under this Certificate of Designation.

"**Physical Certificate**" means any certificate (other than an Electronic Certificate) evidencing any share(s) of Convertible Preferred Stock, which certificate is substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such share(s) and duly executed by the Company and countersigned by the Transfer Agent.

"**Purchase Agreement**" means that certain Securities Purchase Agreement between the Company and the Purchasers dated as of August 24, 2020, as it may be amended, supplemented or otherwise modified from time to time, with respect to certain terms and conditions concerning, among other things, the rights of and restrictions on the Holders.

"**Purchasers**" has the meaning set forth in the Purchase Agreement.

"**Purchaser Parties**" means the Purchasers and each Permitted Transferee (as defined in the Purchase Agreement) of a Purchaser to whom shares of Convertible Preferred Stock or Common Stock issued upon conversion of shares of Convertible Preferred Stock are transferred pursuant to Section 4.2 of the Purchase Agreement or Common Stock issued under the Purchase Agreement.

"**Record Date**" means, with respect to any dividend or distribution on, or issuance to holders of, Convertible Preferred Stock or Common Stock, the date fixed (whether by law, contract or the Board of Directors or otherwise) to determine the Holders or the holders of Common Stock, as applicable, that are entitled to such dividend, distribution or issuance.

"**Redemption**" has the meaning set forth in **Section 7(b)**.

"**Redemption Date**" means the date fixed, pursuant to **Section 7(d)**, for the settlement of the repurchase of the Convertible Preferred Stock by the Company pursuant to a Redemption.

"**Redemption Notice**" has the meaning set forth in **Section 7(f)**.

"**Redemption Notice Date**" means, with respect to a Redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 7(f)**.

"**Redemption Price**" means the consideration payable by the Company to repurchase any Convertible Preferred Stock upon its Redemption, calculated pursuant to **Section 7(e)**.

"**Reference Property**" has the meaning set forth in **Section 10(i)(i)**.

"**Reference Property Unit**" has the meaning set forth in **Section 10(i)(i)**.

"**Register**" has the meaning set forth in **Section 3(f)(ii)**.

"**Registrar**" has the meaning set forth in **Section 3(f)(i)**.

"**Registration Rights Agreement**" means that certain Registration Rights Agreement, dated as of [*closing date*], between the Company, BTO Freeze Parent L.P., a Delaware limited partnership, and the other Holders party thereto from time to time, as it may be amended or modified in accordance with the terms thereof.

"**Regular Dividend Payment Date**" means, with respect to any share of Convertible Preferred Stock, each March 31, June 30, September 30 and December 31 of each year, beginning on December 31, 2020 (or beginning on such other date specified in the Certificate evidencing such share).

"**Regular Dividend Period**" means each period from, and including, a Regular Dividend Payment Date (or, in the case of the first Regular Dividend Period, from, and including, the Initial Issue Date) to, but excluding, the next Regular Dividend Payment Date.

"**Regular Dividend Rate**" means four percent (4.0%) per annum or, to the extent and during the period with respect to which such rate has been adjusted as provided in **Section 8(b)**, such adjusted rate.

"**Regular Dividend Record Date**" has the following meaning: (a) March 15th, in the case of a Regular Dividend Payment Date occurring on March 31st; (b) June 15th, in the case of a Regular Dividend Payment Date occurring on June 30th; (c) September 15th, in the case of a Regular Dividend Payment Date occurring on September 30th; and (d) December 15th, in the case of a Regular Dividend Payment Date occurring on December 31st.

"**Regular Dividends**" has the meaning set forth in **Section 5(a)(i)**.

"**Repurchase Upon Fundamental Change**" means the repurchase of any Convertible Preferred Stock by the Company pursuant to **Section 8**.

"**Resale Registration Statement**" has the meaning ascribed to "Resale Shelf Registration Statement" in the Registration Rights Agreement.

"**Restricted Stock Legend**" means a legend substantially in the form set forth in **Exhibit B**.

"**Rule 144**" means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

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

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

"**Security**" means any Convertible Preferred Stock or Conversion Share.

"**Series A Preferred Stock**" means Series A Preferred Stock, par value $0.001 of the Company.

"**Series B Preferred Stock**" means Series B Preferred Stock, par value $0.001 of the Company.

"**Share Agent**" means the Transfer Agent or any Registrar, Paying Agent or Conversion Agent.

"**Subsidiary**" means, with respect to any Person, (a) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than 50% of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (b) any partnership or limited liability company where (x) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (y) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

"**Successor Person**" has the meaning set forth in **Section 10(i)(iii)**.

"**Tender/Exchange Offer Valuation Period**" has the meaning set forth in **Section 10(f)(i)(2)**.

"**Trading Day**" means any day on which (a) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (b) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**Transfer Agent**" means Continental Stock Transfer & Trust Company or its successor.

"**Transfer-Restricted Security**" means any Security that constitutes a "restricted security" (as defined in Rule 144); *provided*, *however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(a) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(b) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a "restricted security" (as defined in Rule 144); and

(c) (i) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice; and (ii) the Company has received such certificates or other documentation or evidence as the Company may reasonably require to determine that the Holder, holder or beneficial owner of such Security is not, and that has not been during the immediately preceding three (3) months, an Affiliate of the Company.

"**VWAP Market Disruption Event**" means, with respect to any date, (a) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (b) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**VWAP Trading Day**" means a day on which (a) there is no VWAP Market Disruption Event; and (b) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

Section 2. RULES OF CONSTRUCTION. For Purposes of this Certificate of Designation:

(a) "or" is not exclusive;

(b) "including" means "including without limitation";

(c) "will" expresses a command;

(d) the "average" of a set of numerical values refers to the arithmetic average of such numerical values;

(e) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;

(f) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;

(g) "herein," "hereof" and other words of similar import refer to this Certificate of Designation as a whole and not to any particular Section or other subdivision of this Certificate of Designation, unless the context requires otherwise;

(h) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise; and

(i) the exhibits, schedules and other attachments to this Certificate of Designation are deemed to form part of this Certificate of Designation.

SECTION 3. THE CONVERTIBLE PREFERRED STOCK.

(a) *Designation; Par Value*. A series of stock of the Company titled the "4.0% Series C Convertible Preferred Stock" (the "**Convertible Preferred Stock**") is hereby designated and created out of the authorized and unissued shares of preferred stock of the Company. The par value of the Convertible Preferred Stock is $0.001 per share.

(b) *Number of Authorized Shares*. The total authorized number of shares of Convertible Preferred Stock is two hundred fifty thousand (250,000); *provided*, *however* that, by resolution of the Board of Directors and upon proper filing of an amendment to this Certificate of Designation with the Nevada Secretary of State, the total number of authorized shares of Convertible Preferred Stock may be increased or reduced to a number that is not less than the number of shares of Convertible Preferred Stock then outstanding.

(c) *Form, Dating and Denominations*.

(i) *Form and Date of Certificates Evidencing Convertible Preferred Stock*. Each Certificate evidencing any Convertible Preferred Stock will (1) be substantially in the form set forth in **Exhibit A**; (2) bear the legends required by **Section 3(g)** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depositary; and (3) be dated as of the date it is countersigned by the Transfer Agent.

(ii) *Electronic Certificates; Physical Certificates*. The Convertible Preferred Stock will be originally issued initially in the form of one or more Electronic Certificates. Electronic Certificates may be exchanged for Physical Certificates, and Physical Certificates may be exchanged for Electronic Certificates, upon request by the Holder thereof pursuant to customary procedures, subject to **Section 3(h)**.

(iii) *Electronic Certificates; Interpretation.* For purposes of this Certificate of Designation, (1) each Electronic Certificate will be deemed to include the text of the stock certificate set forth in **Exhibit A**; (2) any legend or other notation that is required to be included on a Certificate will be deemed to be affixed to any Electronic Certificate notwithstanding that such Electronic Certificate may be in a form that does not permit affixing legends thereto; (3) any reference in this Certificate of Designation to the "delivery" of any Electronic Certificate will be deemed to be satisfied upon the registration of the electronic book entry representing such Electronic Certificate in the name of the applicable Holder; (4) upon satisfaction of any applicable requirements of the Nevada Revised Statutes, the Articles of Incorporation and the Bylaws of the Company, and any related requirements of the Transfer Agent, in each case for the issuance of Convertible Preferred Stock in the form of one or more Electronic Certificates, such Electronic Certificates will be deemed to be executed by the Company and countersigned by the Transfer Agent.

(iv) *Appointment of Depositary*. If any Convertible Preferred Stock is admitted to the book-entry clearance and settlement facilities of any electronic depositary, then, notwithstanding anything to the contrary in this Certificate of Designation, each reference in this Certificate of Designation to the delivery of, or payment on, any such Convertible Preferred Stock, or the delivery of any related notice or demand, will be deemed to be satisfied to the extent the applicable procedures of such depositary governing such delivery or payment, as applicable, are satisfied.

(v) *No Bearer Certificates; Denominations*. The Convertible Preferred Stock will be issued only in registered form and only in whole numbers of shares.

(vi) *Registration Numbers*. Each Certificate evidencing any share of Convertible Preferred Stock will bear a unique registration number that is not affixed to any other Certificate evidencing any other then-outstanding shares of Convertible Preferred Stock.

(d) *Execution, Countersignature and Delivery*.

(i) *Due Execution by the Company*. At least two (2) duly authorized Officers will sign each Certificate evidencing any Convertible Preferred Stock on behalf of the Company by manual, facsimile or electronic signature. The validity of any Convertible Preferred Stock will not be affected by the failure of any Officer whose signature is on any Certificate evidencing such Convertible Preferred Stock to hold, at the time such Certificate is countersigned by the Transfer Agent, the same or any other office at the Company.

(ii) *Countersignature by Transfer Agent*. No Certificate evidencing any share of Convertible Preferred Stock is valid until such Certificate is countersigned by the Transfer Agent. Each Certificate will be deemed to be duly countersigned only when an authorized signatory of the Transfer Agent (or a duly appointed agent thereof) manually signs the countersignature block set forth in such Certificate.

(e) *Method of Payment; Delay When Payment Date is Not a Business Day*.

(i) *Method of Payment*. The Company will pay all cash amounts due on any shares of Convertible Preferred Stock of any Holder by check mailed to the address of such Holder set forth in the Register; *provided*, *however*, that if such Holder has delivered to the Company, no later than the time set forth in the next sentence, a written request to receive payment by wire transfer to an account of such Holder within the United States, then the Company will pay such cash amounts by wire transfer of immediately available funds to such account. To be timely, such written request must be delivered no later than the Close of Business on the following date: (1) with respect to the payment of any declared cash Dividend due on a Dividend Payment Date for the Convertible Preferred Stock, the related Record Date; and (y) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

(1) *Electronic Certificates*. The Company will pay (or cause the Paying Agent to pay) all declared cash Dividends or other cash amounts due on any Convertible Preferred Stock evidenced by an Electronic Certificate by wire transfer of immediately available funds.

(2) *Physical Certificates*. The Company will pay (or cause the Paying Agent to pay) all declared cash Dividends or other cash amounts due on any Convertible Preferred Stock evidenced by a Physical Certificate as follows:

(A) if the aggregate Liquidation Preference of the Convertible Preferred Stock evidenced by such Physical Certificate is at least five million dollars ($5,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Convertible Preferred Stock entitled to such cash Dividend or amount has delivered to the Paying Agent, no later than the time set forth in the next sentence, a written request to receive payment by wire transfer to an account of such Holder within the United States, by wire transfer of immediately available funds to such account; and

(B) in all other cases, by check mailed to the address of such Holder set forth in the Register.

To be timely, such written request must be delivered no later than the Close of Business on the following date: (x) with respect to the payment of any declared cash Dividend due on a Dividend Payment Date for the Convertible Preferred Stock, the related Record Date; and (y) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

(ii) *Delay of Payment when Payment Date is Not a Business Day*. If the due date for a payment on any Convertible Preferred Stock as provided in this Certificate of Designation is not a Business Day, then, notwithstanding anything to the contrary in this Certificate of Designation, such payment may be made on the immediately following Business Day and no interest, dividend or other amount will accrue or accumulate on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a "Business Day."

(f) *Transfer Agent, Registrar, Paying Agent and Conversion Agent*.

(i) *Generally*. The Company designates its principal U.S. executive offices, and any office of the Transfer Agent in the continental United States, as an office or agency where Convertible Preferred Stock may be presented for (1) registration of transfer or for exchange (the "**Registrar**"); (2) payment (the "**Paying Agent**"); and (3) conversion (the "**Conversion Agent**"). At all times when any Convertible Preferred Stock is outstanding, the Company will maintain an office in the continental United States constituting the Registrar, Paying Agent and Conversion Agent.

(ii) *Maintenance of the Register*. The Company will keep, or cause there to be kept, a record (the "**Register**") of the names and addresses of the Holders, the number of shares of Convertible Preferred Stock held by each Holder and the transfer, exchange, repurchase, Redemption and conversion of the Convertible Preferred Stock. Absent manifest error, the entries in the Register will be conclusive and the Company and the Transfer Agent may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly. The Company will promptly provide a copy of the Register to any Holder upon its request.

(iii) *Subsequent Appointments*. By notice to each Holder, the Company may, at any time, appoint any Person (including any Subsidiary of the Company) to act as Registrar, Paying Agent or Conversion Agent.

(iv) If the Company or any of its Subsidiaries acts as Paying Agent or Conversion Agent, then (1) it will segregate for the benefit of the Holders all money and other property held by it as Paying Agent or Conversion Agent; and (2) references in this Certificate of Designation to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or with respect to the Convertible Preferred Stock, will be deemed to refer to cash or other property so segregated , or to the segregation of such cash or other property, respectively.

(g) *Legends*.

(i) *Restricted Stock Legend*.

(1) Each Certificate evidencing any share of Convertible Preferred Stock that is a Transfer-Restricted Security will bear the Restricted Stock Legend.

(2) If any share of Convertible Preferred Stock is issued in exchange for, in substitution of, or to effect a partial conversion of, any other share(s) of Convertible Preferred Stock (such other share(s) being referred to as the "old share(s)" for purposes of this **Section 3(g)(i)(2)**), including pursuant to Section **3(i)** or **3(k)**, then the Certificate evidencing such share will bear the Restricted Stock Legend if the Certificate evidencing such old share(s) bore the Restricted Stock Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such conversion, as applicable; *provided*, *however*, that the Certificate evidencing such share need not bear the Restricted Stock Legend if such share does not constitute a Transfer-Restricted Security immediately after such exchange or substitution, or as of such Conversion Date, as applicable.

(ii) *Other Legends*. The Certificate evidencing any Convertible Preferred Stock may bear any other legend or text, not inconsistent with this Certificate of Designation, as may be required by applicable law, by the rules of any applicable depositary for the Convertible Preferred Stock or by any securities exchange or automated quotation system on which such Convertible Preferred Stock is traded or quoted or as may be otherwise reasonably determined by the Company to be appropriate.

(iii) *Acknowledgement and Agreement by the Holders*. A Holder's acceptance of any Convertible Preferred Stock evidencing by a Certificate bearing any legend required by this **Section 3(g)** will constitute such Holder's acknowledgement of, and agreement to comply with, the restrictions set forth in such legend.

(iv) *Legends on Conversion Shares*.

(1) Each Conversion Share will bear a legend substantially to the same effect as the Restricted Stock Legend if the Convertible Preferred Stock upon the conversion of which such Conversion Share was issued was (or would have been had it not been converted) a Transfer-Restricted Security at the time such Conversion Share was issued; *provided*, *however*, that such Conversion Share need not bear such a legend if the Company determines, in its reasonable discretion, that such Conversion Share need not bear such a legend.

(2) Notwithstanding anything to the contrary in **Section 3(g)(iv)(1)**, a Conversion Share need not bear a legend pursuant to **Section 3(g)(iv)(1)** if such Conversion Share is issued in an uncertificated form that does not permit affixing legends thereto (subject to compliance with Nevada Revised Statutes 78.235 and 78.242), *provided* the Company takes measures (including the assignment thereto of a "restricted" CUSIP number) that it reasonably deems appropriate to enforce the transfer restrictions referred to in such legend.

(h) *Transfers and Exchanges; Transfer Taxes; Certain Transfer Restrictions*.

(i) *Provisions Applicable to All Transfers and Exchanges*.

(1) *Generally*. Subject to this **Section 3(h)**, Convertible Preferred Stock evidenced by any Certificate may be transferred or exchanged from time to time and the Company will cause the Registrar to record each such transfer or exchange in the Register.

(2) *No Services Charge; Transfer Taxes*. The Company and the Share Agents will not impose any service charge on any Holder for any transfer, exchange or conversion of any Convertible Preferred Stock, but the Company, the Transfer Agent, the Registrar and the Conversion Agent may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Convertible Preferred Stock, other than exchanges pursuant to **Section 3(i)** or **Section 3(q)** not involving any transfer (and; *provided*, that (A) any such taxes or charges incurred in connection with the original issuance of the Convertible Preferred Stock shall be paid and borne by the Company; and (B) any such taxes or charges incurred in connection with a conversion of the Convertible Preferred Stock pursuant to **Section 10** shall be paid and borne as provided in **Section 11(c))**.

(3) *No Transfers or Exchanges of Fractional Shares*. Notwithstanding anything to the contrary in this Certificate of Designation, all transfers or exchanges of Convertible Preferred Stock must be in an amount representing a whole number of shares of Convertible Preferred Stock, and no fractional share of Convertible Preferred Stock may be transferred or exchanged.

(4) *Legends*. Each Certificate evidencing any share of Convertible Preferred Stock that is issued upon transfer of, or in exchange for, another share of Convertible Preferred Stock will bear each legend, if any, required by **Section 3(g)**.

(5) *Settlement of Transfers and Exchanges*. Upon satisfaction of the requirements of this Certificate of Designation to effect a transfer or exchange of any Convertible Preferred Stock, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(6) *Exchanges to Remove Transfer Restrictions*. For the avoidance of doubt, and subject to the terms of this Certificate of Designation, as used in this **Section 3(h)**, an "exchange" of a Certificate includes an exchange effected for the sole purpose of removing any Restricted Stock Legend affixed to such Certificate.

(ii) *Transfers and Exchanges of Convertible Preferred Stock.*

(1) Subject to this **Section 3(h)**, a Holder of any Convertible Preferred Stock evidenced by a Certificate may (x) transfer any whole number of shares of such Convertible Preferred Stock to one or more other Person(s); and (y) exchange any whole number of shares of such Convertible Preferred Stock for an equal number of shares of Convertible Preferred Stock evidenced by one or more other Certificates; *provided*, *however*, that, to effect any such transfer or exchange, such Holder must, if such Certificate is a Physical Certificate, surrender such Physical Certificate to the office of the Transfer Agent or the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Transfer Agent or the Registrar.

(2) Upon the satisfaction of the requirements of this Certificate of Designation to effect a transfer or exchange of any whole number of shares of a Holder's Convertible Preferred Stock evidenced by a Certificate (such Certificate being referred to as the "old Certificate" for purposes of this **Section 3(h)(ii)(2)**):

(A) such old Certificate will be promptly cancelled pursuant to **Section 3(m)**;

(B) if fewer than all of the shares of Convertible Preferred Stock evidenced by such old Certificate are to be so transferred or exchanged, then the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Certificate not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 3(g)**;

(C) in the case of a transfer to a transferee, the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by **Section 3(g)**; and

(D) in the case of an exchange, the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock to be so exchanged; (y) are registered in the name of the Person to whom such old Certificate was registered; and (z) bear each legend, if any, required by **Section 3(g)**.

(iii) *Transfers of Shares Subject to Redemption, Repurchase or Conversion*. Notwithstanding anything to the contrary in this Certificate of Designation, the Company, the Transfer Agent and the Registrar will not be required to register the transfer of or exchange any share of Convertible Preferred Stock that has been surrendered for conversion.

(i) *Exchange and Cancellation of Convertible Preferred Stock to Be Converted or to Be Repurchased Pursuant to a Repurchase Upon Fundamental Change or a Redemption*.

(i) *Partial Conversions of Physical Certificates and Partial Repurchases of Physical Certificates Pursuant to a Repurchase Upon Fundamental Change or a Redemption*. If fewer than all of the shares of Convertible Preferred Stock evidenced by a Physical Certificate (such Physical Certificate being referred to as the "old Physical Certificate" for purposes of this **Section 3(i)(i)**) are to be converted pursuant to **Section 10** or repurchased pursuant to a Repurchase Upon Fundamental Change or a Redemption, then, as soon as reasonably practicable after such Physical Certificate is surrendered for such conversion or repurchase, as applicable, the Company will cause such Physical Certificate to be exchanged, pursuant and subject to **Section 3(h)**, for (1) one or more Physical Certificates that each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Physical Certificate that are not to be so converted or repurchased, as applicable, and deliver such Physical Certificate(s) to such Holder; and (2) a Physical Certificate evidencing a whole number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Physical Certificate that are to be so converted or repurchased, as applicable, which Physical Certificate will be converted or repurchased, as applicable, pursuant to the terms of this Certificate of Designation; *provided*, *however*, that the Physical Certificate referred to in this **clause (2)** need not be issued at any time after which such shares subject to such conversion or repurchase, as applicable, are deemed to cease to be outstanding pursuant to **Section 3(o)**.

(ii) *Cancellation of Convertible Preferred Stock that Is Converted and Convertible Preferred Stock that Is Repurchased Pursuant to a Repurchase Upon Fundamental Change or a Redemption*. If shares of Convertible Preferred Stock evidenced by a Certificate (or any portion thereof that has not theretofore been exchanged pursuant to **Section 3(i)(i)**) (such Certificate being referred to as the "old Certificate" for purposes of this **Section 3(i)(ii)**) are to be converted pursuant to **Section 10** or repurchased pursuant to a Repurchase Upon Fundamental Change or a Redemption, then, promptly after the later of the time such Convertible Preferred Stock is deemed to cease to be outstanding pursuant to **Section 3(o)** and the time such old Certificate is surrendered for such conversion or repurchase, as applicable, (1) such old Certificate will be cancelled pursuant to **Section 3(m)**; and (2) in the case of a partial conversion or repurchase, the Company will issue, execute and deliver to such Holder, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Certificate that are not to be so converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 3(g)**.

(j) *Status of Retired or Treasury Shares*. Upon any share of Convertible Preferred Stock ceasing to be outstanding (including upon conversion or redemption thereof, and including any shares of Convertible Preferred Stock deemed to be treasury shares under Nevada Revised Statutes 78.283), such share will be deemed, automatically and without any further action of the Board of Directors, to be retired and to resume the status of an authorized and unissued share of preferred stock of the Company, and such share cannot thereafter be reissued as Convertible Preferred Stock.

(k) *Replacement Certificates*. If a Holder of any Convertible Preferred Stock claims that the Certificate(s) evidencing such Convertible Preferred Stock have been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(c)**, a replacement Certificate evidencing such Convertible Preferred Stock upon surrender to the Company or the Transfer Agent of such mutilated Certificate, or upon delivery to the Company or the Transfer Agent of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Transfer Agent and the Company. In the case of a lost, destroyed or wrongfully taken Certificate evidencing Convertible Preferred Stock, the Company and the Transfer Agent may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the Company and the Transfer Agent to protect the Company and the Transfer Agent from any loss that any of them may suffer if such Certificate is replaced.

(l) *Registered Holders*. Only the Holder of any share of Convertible Preferred Stock will have rights under this Certificate of Designation as the owner of such share of Convertible Preferred Stock.

(m) *Cancellation*. The Company may at any time deliver Certificates evidencing Convertible Preferred Stock, if any, to the Transfer Agent for cancellation. The Registrar, the Paying Agent and the Conversion Agent will forward to the Transfer Agent each share of Convertible Preferred Stock duly surrendered to them for transfer, exchange, payment or conversion. The Company will cause the Transfer Agent to promptly cancel all Certificates evidencing shares of Convertible Preferred Stock so surrendered to it in accordance with its customary procedures.

(n) *Shares Held by the Company or its Subsidiaries*. Without limiting the generality of **Section 3(j)** and **Section 3(o)**, in determining whether the Holders of the required number of outstanding shares of Convertible Preferred Stock have concurred in any direction, waiver or consent, shares of Convertible Preferred Stock owned by the Company or any of its Subsidiaries will be deemed not to be outstanding.

(o) *Outstanding Shares*.

(i) *Generally*. The shares of Convertible Preferred Stock that are outstanding at any time will be deemed to be those shares indicated as outstanding in the Register (absent manifest error), excluding those shares of Convertible Preferred Stock that have theretofore been (1) cancelled by the Transfer Agent or delivered to the Transfer Agent for cancellation in accordance with **Section 3(m)**; (2) paid in full upon their conversion or upon their repurchase pursuant to a Repurchase Upon Fundamental Change or a Redemption in accordance with this Certificate of Designation; or (3) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (ii)**, **(iii)**, **(iv)** or **(v)** of this **Section 3(o)**.

(ii) *Replaced Shares*. If any Certificate evidencing any share of Convertible Preferred Stock is replaced pursuant to **Section 3(k)**, then such share will cease to be outstanding at the time of such replacement, unless the Transfer Agent and the Company receive proof reasonably satisfactory to them that such share is held by a "*bona fide* purchaser" under applicable law.

(iii) *Shares to Be Repurchased Pursuant to a Redemption*. If, on a Redemption Date, the Paying Agent holds consideration in kind and amount that is sufficient to pay the aggregate Redemption Price due on such date, then (unless there occurs a default in the payment of the Redemption Price) (1) the Convertible Preferred Stock to be redeemed on such date will be deemed, as of such date, to cease to be outstanding (without limiting the Company's obligations pursuant to **Section 5(d)**); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive the Redemption Price as provided in **Section 7** (and, if applicable, declared Dividends as provided in **Section 5(d)**).

(iv) *Shares to Be Repurchased Pursuant to a Repurchase Upon Fundamental Change*. If, on a Fundamental Change Repurchase Date, the Paying Agent holds consideration in kind and amount that is sufficient to pay the aggregate Fundamental Change Repurchase Price due on such date, then (unless there occurs a default in the payment of the Fundamental Change Repurchase Price) (1) the Convertible Preferred Stock to be repurchased on such date will be deemed, as of such date, to cease to be outstanding (without limiting the Company's obligations pursuant to **Section 5(d)**); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive the Fundamental Change Repurchase Price as provided in **Section 8** (and, if applicable, declared Dividends as provided in **Section 5(d)**).

(v) *Shares to Be Converted*. If any Convertible Preferred Stock is to be converted, then, at the Close of Business on the Conversion Date for such conversion (unless there occurs a default in the delivery of the Conversion Consideration due pursuant to **Section 10** upon such conversion): (1) such Convertible Preferred Stock will be deemed to cease to be outstanding (without limiting the Company's obligations pursuant to **Section 5(d)**); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive such Conversion Consideration as provided in **Section 10** (and, if applicable, declared Dividends as provided in **Section 5(d)**).

(p) *Repurchases by the Company and its Subsidiaries*. Without limiting the generality of **Section 3(m)** and the next sentence, the Company may, from time to time, repurchase Convertible Preferred Stock in open market purchases or in negotiated transactions without delivering prior notice to Holders. The Company will promptly deliver to the Transfer Agent for cancellation all Convertible Preferred Stock that the Company or any of its Subsidiaries have purchased or otherwise acquired.

(q) *Notations and Exchanges*. Without limiting any rights of Holders pursuant to **Section 9**, if any amendment, supplement or waiver to the Articles of Incorporation or this Certificate of Designation changes the terms of any Convertible Preferred Stock, then the Company may, in its discretion, require the Holder of the Certificate evidencing such Convertible Preferred Stock to deliver such Certificate to the Transfer Agent so that the Transfer Agent may place an appropriate notation prepared by the Company on such Certificate and return such Certificate to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Convertible Preferred Stock, issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(c)**, a new Certificate evidencing such Convertible Preferred Stock that reflects the changed terms. The failure to make any appropriate notation or issue a new Certificate evidencing any Convertible Preferred Stock pursuant to this **Section 3(q)** will not impair or affect the validity of such amendment, supplement or waiver.

SECTION 4. RANKING. the convertible preferred stock will rank (a) senior to (i) dividend junior stock with respect to the payment of dividends; and (ii) liquidation junior stock with respect to the distribution of assets upon the company's liquidation, dissolution or winding up; (b) equally with (i) dividend parity stock with respect to the payment of dividends; and (ii) liquidation parity stock with respect to the distribution of assets upon the company's liquidation, dissolution or winding up; and (c) junior to (i) dividend senior stock with respect to the payment of dividends; and (ii) liquidation senior stock with respect to the distribution of assets upon the company's liquidation, dissolution or winding up.

SECTION 5. DIVIDENDS.

(a) *Regular Dividends*.

(i) *Accumulation and Payment of Regular Dividends*. The Convertible Preferred Stock will accumulate cumulative dividends at a rate per annum equal to the Regular Dividend Rate on the Liquidation Preference thereof (calculated in accordance with **Section 5(a)(ii)**), regardless of whether or not declared or funds are legally available for their payment (such dividends that accumulate on the Convertible Preferred Stock pursuant to this sentence, "**Regular Dividends**"). Subject to the other provisions of this **Section 5** (including, for the avoidance of doubt, **Section 5(b)(i)**), such Regular Dividends will be payable when, as and if declared by the Board of Directors, quarterly in arrears on each Regular Dividend Payment Date, to the Holders as of the Close of Business on the immediately preceding Regular Dividend Record Date. Regular Dividends on the Convertible Preferred Stock will accumulate daily from, and including, the last date on which Regular Dividends have been paid (or, if no Regular Dividends have been paid, from, and including, the Initial Issue Date) to, but excluding, the next Regular Dividend Payment Date.

(ii) *Computation of Accumulated Regular Dividends*. Accumulated Regular Dividends will be computed on the basis of a 360-day year comprised of twelve 30-day months. Regular Dividends on each share of Convertible Preferred Stock will accrue on the Liquidation Preference of such share as of immediately before the Close of Business on the preceding Regular Dividend Payment Date (or, if there is no preceding Regular Dividend Payment Date, on the Initial Issue Date of such share).

(b) *Calculation of Regular Dividends*.

(i) *Generally*. The dollar amount (expressed as an amount per share of Convertible Preferred Stock) of each Regular Dividend on the Convertible Preferred Stock (whether or not declared) that has accumulated on the Convertible Preferred Stock in respect of the Regular Dividend Period ending on, but excluding, a Regular Dividend Payment Date, will be added, effective immediately before the Close of Business on the related Regular Dividend Payment Date, to the Liquidation Preference of each share of Convertible Preferred Stock outstanding as of such time. Such addition will occur automatically, without the need of any action on the part of the Company or any other Person.

(ii) *Construction*. Any Regular Dividends added to the Liquidation Preference of any share of Convertible Preferred Stock pursuant to **Section 5(b)(i)** will be deemed to be "declared" and "paid" on such share of Convertible Preferred Stock for all purposes of this Certificate of Designation.

(c) *Participating Dividends.*

(i) *Generally*. Subject to **Section 5(c)(ii)**, no dividend or other distribution on the Common Stock (whether in cash, securities (including rights or options) or other property, or any combination of the foregoing) will be declared or paid on the Common Stock unless, at the time of such declaration and payment, an equivalent dividend or distribution is declared and paid, respectively, on the Convertible Preferred Stock (such a dividend or distribution on the Convertible Preferred Stock, a "**Participating Dividend**," and such corresponding dividend or distribution on the Common Stock, the "**Common Stock Participating Dividend**"), such that (1) the Record Date and the payment date for such Participating Dividend occur on the same dates as the Record Date and payment date, respectively, for such Common Stock Participating Dividend; and (2) the kind and amount of consideration payable per share of Convertible Preferred Stock in such Participating Dividend is the same kind and amount of consideration that would be payable in the Common Stock Participating Dividend in respect of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with **Section 10** but without regard to **Section 10(h)**) in respect of one (1) share of Convertible Preferred Stock that is converted with a Conversion Date occurring on such Record Date (subject to the same arrangements, if any, in such Common Stock Participating Dividend not to issue or deliver a fractional portion of any security or other property, but with such arrangement applying separately to each Holder and computed based on the total number of shares of Convertible Preferred Stock held by such Holder on such Record Date).

(ii) *Stockholder Rights Plans, Common Stock Change Events and Stock Splits, Dividends and Combinations*. **Section 5(c)(i)** will not apply to, and no Participating Dividend will be required to be declared or paid in respect of, (1) a Common Stock Change Event, or an event for which an adjustment to the Conversion Price is required pursuant to **Section 10(f)(i)(1)**, as to which **Section 10(i)** or **Section 10(f)(i)(1)**, respectively, will apply; and (2) rights issued pursuant to a stockholder rights plan.

(d) *Treatment of Dividends Upon Redemption, Repurchase Upon Fundamental Change or Conversion*. If the Redemption Date, Fundamental Change Repurchase Date or Conversion Date of any share of Convertible Preferred Stock is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then the Holder of such share at the Close of Business on such Record Date will be entitled, notwithstanding the related Redemption, Repurchase Upon Fundamental Change or conversion, as applicable, to receive, on or, at the Company's election, before such Dividend Payment Date, such declared Dividend on such share.

SECTION 6. RIGHTS UPON LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) *Generally*. If the Company liquidates, dissolves or winds up, whether voluntarily or involuntarily, then, subject to the rights of any of the Company's creditors or holders of any outstanding Liquidation Senior Stock, each share of Convertible Preferred Stock will entitle the Holder thereof to receive payment for the greater of the amounts set forth in **clause (i)** and **(ii)** below out of the Company's assets or funds legally available for distribution to the Company's stockholders, before any such assets or funds are distributed to, or set aside for the benefit of, any Liquidation Junior Stock:

(i) the Liquidation Preference (including any accumulated and unpaid Regular Dividends on such shares of Convertible Preferred Stock to, but excluding, the date of such payment); and

(ii) the amount such Holder would have received in respect of the number of shares of Common Stock that would be issuable upon conversion of such share of Convertible Preferred Stock in connection with an Optional Conversion assuming the Conversion Date of such conversion occurs on the date of such payment.

Upon payment of such amount in full on the outstanding Convertible Preferred Stock, Holders of the Convertible Preferred Stock will have no rights to the Company's remaining assets or funds, if any. If such assets or funds are insufficient to fully pay such amount on all outstanding shares of Convertible Preferred Stock and the corresponding amounts payable in respect of all outstanding shares of Liquidation Parity Stock, if any, then, subject to the rights of any of the Company's creditors or holders of any outstanding Liquidation Senior Stock, such assets or funds will be distributed ratably on the outstanding shares of Convertible Preferred Stock and Liquidation Parity Stock in proportion to the full respective distributions to which such shares would otherwise be entitled.

(b) *Certain Business Combination Transactions Deemed Not to Be a Liquidation*. For purposes of **Section 6(a)**, the Company's consolidation or combination with, or merger with or into, or the sale, lease or other transfer of all or substantially all of the Company's assets (other than a sale, lease or other transfer in connection with the Company's liquidation, dissolution or winding up) to, another Person will not, in itself, constitute the Company's liquidation, dissolution or winding up, even if, in connection therewith, the Convertible Preferred Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing.

SECTION 7. RIGHT OF THE COMPANY TO REDEEM THE CONVERTIBLE PREFERRED STOCK.

(a) *Right to Redeem Prior to the One Hundred Eighty Day Anniversary*. Subject to the terms of this **Section 7**, the Company has the right, at its election, to redeem up to fifty thousand (50,000) shares of the Convertible Preferred Stock, at any time and from time to time, on a Redemption Date prior to the one hundred eighty (180) day anniversary of the Initial Issue Date, for a cash purchase price equal to the Redemption Price.

(b) *Right to Redeem On or After the Five Year Anniversary*. Subject to the terms of this **Section 7**, the Company has the right, at its election, to redeem, subject to the right of the Holders to convert the Convertible Preferred Stock pursuant to **Section 10** prior to such redemption, all, but not less than all, of the Convertible Preferred Stock, at any time, on a Redemption Date on or after the five (5) year anniversary of the Initial Issue Date, for a cash purchase price equal to the Redemption Price (such redemption, together with the redemption referenced in **Section 7(a)**, the "**Redemptions**" and each, a "**Redemption**").

(c) *Redemption Prohibited in Certain Circumstances*. The Company will not call for Redemption, or otherwise send a Redemption Notice in respect of the Redemption of, any Convertible Preferred Stock pursuant to this **Section 7** unless (i) the Company has sufficient funds legally available, and is permitted under the terms of its indebtedness for borrowed money, to fully pay the Redemption Price in respect of all shares of Convertible Preferred Stock called for Redemption; and (ii) the Common Stock Liquidity Conditions are satisfied and will be satisfied on the Redemption Date.

(d) *Redemption Date*. The Redemption Date for any Redemption will be a Business Day of the Company's choosing that is no more than twenty (20), nor less than ten (10), calendar days after the Redemption Notice Date for such Redemption.

(e) *Redemption Price*. The Redemption Price for any share of Convertible Preferred Stock to be repurchased pursuant to a Redemption is an amount in cash equal the product of (x) the Liquidation Preference (including any accumulated and unpaid Regular Dividends) of such share at the Close of Business on the Redemption Date for such Redemption (including any accumulated and unpaid Regular Dividends on such share), and (y):

(i) in the case of a Redemption with a Redemption Date occurring prior to the one hundred eighty (180) day anniversary of the Initial Issue Date, 125%;

(ii) in the case of a Redemption with a Redemption Date occurring on or after the five (5) year anniversary but prior to the six (6) year anniversary of the Initial Issue Date, 105%; or

(iii) in the case of a Redemption with a Redemption Date occurring on or after the six (6) year anniversary of the Initial Issue Date, 100%.

(f*)* *Redemption Notice*. To call any share of Convertible Preferred Stock for Redemption, the Company must send to the Holder of such share a notice of such Redemption (a "**Redemption Notice**") , which Redemption Notice must state:

(i) that such share has been called for Redemption, briefly describing the Company's Redemption right under this Certificate of Designation;

(ii) the Redemption Date for such Redemption;

(iii) the Redemption Price per share of Convertible Preferred Stock;

(iv) if the Redemption Date is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, that such Dividend will be paid in accordance with **Section 5(d)**;

(v) the name and address of the Transfer Agent and the Conversion Agent, as well as instructions whereby the Holder may surrender such share to the Transfer Agent or Conversion Agent;

(vi) that Convertible Preferred Stock called for Redemption may be converted pursuant to **Section 10**, at any time before the Close of Business on the Business Day immediately before the Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full); and

(vii) the Conversion Price in effect on the Redemption Notice Date for such Redemption.

(g) *Payment of the Redemption Price*. The Company will cause the Redemption Price for each share of Convertible Preferred Stock subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date.

SECTION 8. RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE CONVERTIBLE PREFERRED STOCK UPON A FUNDAMENTAL CHANGE.

(a) *Fundamental Change Repurchase Right*. Subject to the other terms of this **Section 8**, if a Fundamental Change occurs, then each Holder may, at its election, either (i) effective as of immediately prior to the Fundamental Change, convert all or a portion of its shares of Convertible Preferred Stock pursuant to **Section 10** at the then-current Conversion Price or (ii) require the Company to repurchase (the "**Fundamental Change Repurchase Right**") all, or any whole number of shares that is less than all, of such Holder's Convertible Preferred Stock that have not been converted pursuant to clause (i) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(b) *Funds Legally Available for Payment of Fundamental Change Repurchase Price; Covenant Not to Take Certain Actions*. If the Company does not have sufficient funds legally available to pay the Fundamental Change Repurchase Price of all shares of Convertible Preferred Stock that are to be repurchased pursuant to a Repurchase Upon Fundamental Change, then the Company shall (1) pay the maximum amount of such Fundamental Change Repurchase Price that can be paid out of funds legally available for payment, which payment will be made pro rata to each Holder based on the total number of shares of Convertible Preferred Stock of such Holder that were otherwise to be repurchased pursuant to such Repurchase Upon Fundamental Change; and (2) purchase any shares of Convertible Preferred Stock not purchased because of the foregoing limitations at the applicable Fundamental Change Repurchase Price as soon as practicable after the Company is able to make such purchase out of assets legally available for the purchase of such shares of Convertible Preferred Stock. The inability of the Company (or its successor) to make a purchase payment for any reason shall not relieve the Company (or its successor) from its obligation to effect any required purchase when, as and if permitted by applicable law. If the Company fails to pay the Fundamental Change Repurchase Price in full when due in accordance with this **Section 8** in respect of some or all of the shares or Convertible Preferred Stock to be repurchased pursuant to the Fundamental Change Repurchase Right, the Company will pay Dividends on such shares not repurchased at a Dividend Rate of five and one half percent (5.5%) per annum until such shares are repurchased, payable quarterly in arrears on each Dividend Payment Date, for the period from and including the first Dividend Payment Date (or the Initial Issue Date, as applicable) upon which the Company fails to pay the Fundamental Change Repurchase Price in full when due in accordance with this Section 8 through but not including the latest of the day upon which the Company pays the Fundamental Change Repurchase Price in full in accordance with this **Section 8**. Notwithstanding the foregoing, in the event a Holder exercises a Fundamental Change Repurchase Right pursuant to this **Section 8** at a time when the Company is restricted or prohibited (contractually or otherwise) from repurchasing some or all of the Convertible Preferred Stock subject to the Fundamental Change Repurchase Right, the Company will use its commercially reasonable efforts to obtain the requisite consents to remove or obtain an exception or waiver to such restrictions or prohibition. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to comply with its obligations under this **Section 8**. The Company will not voluntarily take any action, or voluntarily engage in any transaction, that would result in a Fundamental Change unless the Company has sufficient funds legally available to fully pay the maximum aggregate Fundamental Change Repurchase Price that would be payable in respect of such Fundamental Change on all shares of Conversion Preferred Stock then outstanding.

(c) *Fundamental Change Repurchase Date*. The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Company's choosing that is no more than thirty (30), nor less than twenty (20), Business Days after the date the Company sends the related Final Fundamental Change Notice pursuant to **Section 8(f)**.

(d) *Fundamental Change Repurchase Price*. The Fundamental Change Repurchase Price for any share of Convertible Preferred Stock to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the greater of (i) the Liquidation Preference (including any accumulated and unpaid Regular Dividends) of such share at the Close of Business on the Fundamental Change Repurchase Date for such Fundamental Change (including any accumulated and unpaid Regular Dividends on such share to, but excluding, such Fundamental Change Repurchase Date) and (ii) the amount that such Holders would have received had such Holders, immediately prior to such Fundamental Change, converted such shares of Convertible Preferred Stock into Common Stock pursuant to **Section 10(a)**, without regard to any of the limitations on convertibility contained in **Section 10(h)**.

(e) *Initial Fundamental Change Notice*. On or before the twentieth (20th) Business Day prior to the date on which the Company anticipates consummating a Fundamental Change (or, if later, promptly after the Company discovers that a Fundamental Change may occur), a written notice shall be sent by or on behalf of the Company to the Holders as they appear in the records of the Company, which notice shall contain the date on which the Fundamental Change is anticipated to be effected (or, if applicable, the date on which a Schedule TO or other schedule, form or report disclosing a Fundamental Change was filed) (the "**Initial Fundamental Change Notice**"). No later than ten (10) Business Days prior to the date on which the Company anticipates consummating the Fundamental Change as set forth in the Initial Fundamental Change Notice (or, if the Fundamental Change has already occurred as provided in the Initial Fundamental Change Notice, promptly, but no later than the tenth (10th) Business Day following receipt thereof), any Holder that desires to exercise its rights pursuant to **Section 8(a)** shall notify the Company in writing thereof and shall specify (x) whether such Holder is electing to exercise its rights pursuant to clause (i) or (ii) of **Section 8(a)** and (y) the number of shares of Convertible Preferred Stock subject thereto.

(f) *Final Fundamental Change Notice*. If a Holder elects to exercise its Fundamental Change Repurchase Right pursuant to **Section 8(a)(ii)**, on or before the second (2nd) Business Day after the effective date of a Fundamental Change, the Company will send to each Holder a notice of such Fundamental Change (a "**Final Fundamental Change Notice**"). Such Final Fundamental Change Notice must state:

(i) briefly, the events causing such Fundamental Change;

(ii) the effective date of such Fundamental Change;

(iii) the procedures that a Holder must follow to require the Company to repurchase its Convertible Preferred Stock pursuant to this **Section 8**, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;

(iv) the Fundamental Change Repurchase Date for such Fundamental Change;

(v) the Fundamental Change Repurchase Price per share of Convertible Preferred Stock, including reasonable detail of the calculation thereof;

(vi) if the Fundamental Change Repurchase Date is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, that such Dividend will be paid in accordance with **Section 5(d)**;

(vii) the name and address of the Transfer Agent and the Conversion Agent;

(viii) the Conversion Price in effect on the date of such Final Fundamental Change Notice and a description and quantification of any adjustments to the Conversion Price that may result from such Fundamental Change;

(ix) that Convertible Preferred Stock may be converted pursuant to **Section 10** at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or, if the Company fails to pay the Fundamental Change Repurchase Price due on such Fundamental Change Repurchase Date in full, at any time until such time as the Company pays such Fundamental Change Repurchase Price in full);

(x) that shares of Convertible Preferred Stock for which a Fundamental Change Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price; and

(xi) that shares of Convertible Preferred Stock that are subject to a Fundamental Change Repurchase Notice that has been duly tendered may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with this Certificate of Designation.

(g) *Procedures to Exercise the Fundamental Change Repurchase Right*.

(i) *Delivery of Fundamental Change Repurchase Notice and Shares of Convertible Preferred Stock to Be Repurchased*. To exercise its Fundamental Change Repurchase Right for any share(s) of Convertible Preferred Stock following a Fundamental Change, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such share(s); and

(2) such share(s), duly endorsed for transfer (to the extent such share(s) are evidenced by one or more Physical Certificates).

(ii) *Contents of Fundamental Change Repurchase Notices*. Each Fundamental Change Repurchase Notice with respect to any share(s) of Convertible Preferred Stock must state:

(1) if such share(s) are evidenced by one or more Physical Certificates, the certificate number(s) of such Physical Certificate(s);

(2) the number of shares of Convertible Preferred Stock to be repurchased, which must be a whole number; and

(3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such share(s).

(iii) *Withdrawal of Fundamental Change Repurchase Notice*. A Holder that has delivered a Fundamental Change Repurchase Notice with respect to any share(s) of Convertible Preferred Stock may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date. Such withdrawal notice must state:

(1) if such share(s) are evidenced by one or more Physical Certificates, the certificate number(s) of such Physical Certificate(s);

(2) the number of shares of Convertible Preferred Stock to be withdrawn, which must be a whole number; and

(3) the number of shares of Convertible Preferred Stock, if any, that remain subject to such Fundamental Change Repurchase Notice, which must be a whole number.

If any Holder delivers to the Paying Agent any such withdrawal notice withdrawing any share(s) of Convertible Preferred Stock from any Fundamental Change Repurchase Notice previously delivered to the Paying Agent, and such share(s) have been surrendered to the Paying Agent, then such share(s) will be returned to the Holder thereof.

(h) *Payment of the Fundamental Change Repurchase Price*. Subject to **Section 8(b)**, the Company will cause the Fundamental Change Repurchase Price for each share of Convertible Preferred Stock to be repurchased pursuant to a Repurchase Upon Fundamental Change to be paid to the Holder thereof on or before the applicable Fundamental Change Repurchase Date (or, if later in the case such share is evidenced by a Physical Certificate, the date (x) the Physical Certificate evidencing such share is delivered to the Paying Agent).

(i) *Third Party May Conduct Repurchase Offer In Lieu of the Company*. Notwithstanding anything to the contrary in this **Section 8**, the Company will be deemed to satisfy its obligations under this **Section 8** if one or more third parties conduct any Repurchase Upon Fundamental Change and related offer to repurchase Convertible Preferred Stock otherwise required by this **Section 8** in a manner that would have satisfied the requirements of this **Section 8** if conducted directly by the Company.

(j) *Fundamental Change Agreements*. The Company shall not enter into any agreement for a transaction constituting a Fundamental Change unless such agreement provides for, or does not interfere with or prevent (as applicable), the exercise by the Holders of their Fundamental Change Repurchase Right in a manner that is consistent with, and gives effect to, this **Section 8**.

Section 9. VOTING RIGHTS. The Convertible Preferred Stock will have no voting rights except as set forth in this **Section 9** or as provided in the Articles of Incorporation or required by the Nevada Revised Statutes.

(a) *Voting and Consent Rights with Respect to Specified Matters*.

(i) *Generally*. Subject to the other provisions of this **Section 9(a)**, (x) while any share of the Convertible Preferred Stock is outstanding with respect to **Section 9(a)(i)(1)** and **Section 9(a)(i)(2)**, and (y) while at least seventy-five percent (75%) of the Convertible Preferred Stock issued on the Initial Issue Date is outstanding with respect to **Section 9(a)(i)(3)** and **Section 9(a)(i)(4)**, each following event will require, and cannot be effected without, the affirmative vote or consent of Holders constituting at least a majority of the outstanding voting power of the Convertible Preferred Stock:

(1) any amendment, modification or repeal of any provision of the Articles of Incorporation, Bylaws or this Certificate of Designation that adversely affects the rights, preferences or powers of the Convertible Preferred Stock (other than an amendment, modification or repeal permitted by **Section 9(a)(ii)**);

(2) any issuances by the Company of shares of, or other securities convertible into, Dividend Parity Stock, Liquidation Parity Stock, Dividend Senior Stock or Liquidation Senior Stock;

(3) any voluntary dissolution, liquidation, bankruptcy or winding up of the Company or any deregistration or delisting of the Common Stock of the Company; or

(4) any incurrence by the Company of any indebtedness for borrowed money unless the Company's ratio of indebtedness for borrowed money to LTM EBITDA would be less than a ratio of 5-to-1 on a pro forma basis giving effect to such incurrence and the use of proceeds therefrom;

provided, *however*, that each of the following will be deemed not to adversely affect the special rights, preferences or voting powers of the Convertible Preferred Stock and will not require any vote or consent pursuant to **Section 9(a)(i)(1)** and **Section 9(a)(i)(2)**:

(I) any increase in the number of the authorized but unissued shares of the Company's undesignated preferred stock;

(II) any increase in the number of authorized shares of Convertible Preferred Stock;

(III) the creation and issuance, or increase in the authorized or issued number, of any shares of any class or series of stock that is both Dividend Junior Stock and Liquidation Junior Stock; and

(IV) the application of **Section 10(i)**, including the execution and delivery of any supplemental instruments pursuant to **Section 10(i)(iii)** solely to give effect to such provision.

(ii) *Certain Amendments Permitted Without Consent*. Notwithstanding anything to the contrary in **Section 9(a)(i)(1)**, the Company may amend, modify or repeal any of the terms of the Convertible Preferred Stock without the vote or consent of any Holder to:

(1) amend or correct this Certificate of Designation to cure any ambiguity or correct any omission, defect or inconsistency; or

(2) make any other change to the Articles of Incorporation or this Certificate of Designation that does not, individually or in the aggregate with all other such changes, adversely affect the rights of any Holder (other than any Holders that have consented to such change).

(b) *Right to Vote with Holders of Common Stock on an As-Converted Basis*. Subject to the other provisions of, and without limiting the other voting rights provided in, this **Section 9**, and except as provided in the Articles of Incorporation or restricted by the Nevada Revised Statutes, the Holders will have the right to vote together as a single class with the holders of the Common Stock on each matter submitted for a vote or consent by the holders of the Common Stock, and, for these purposes, (i) the Convertible Preferred Stock of each Holder will entitle such Holder to be treated as if such Holder were the holder of record, as of the record or other relevant date for such matter, of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with **Section 10(e)**, including **Section 10(e)(ii)**) upon conversion of such Convertible Preferred Stock assuming such Convertible Preferred Stock were converted with a Conversion Date occurring on such record or other relevant date; and (ii) the Holders will be entitled to notice of all stockholder meetings or proposed actions by written consent in accordance with the Articles of Incorporation, the Bylaws of the Company, and the Nevada Revised Statutes as if the Holders were holders of Common Stock. Notwithstanding the foregoing, the aggregate voting power of the Convertible Preferred Stock when voting with the holders of the Common Stock shall be limited to the extent necessary to comply with the NASDAQ Listing Standard Rules, and any resulting limitation on the voting rights of the Convertible Preferred Stock shall apply pro rata among the Holders thereof.

(c) *Procedures for Voting and Consents*.

(i) *Rules and Procedures Governing Votes and Consents*. If any vote or consent of the Holders will be held or solicited, including at an annual meeting or a special meeting of stockholders, then (1) the Board of Directors will adopt customary rules and procedures at its discretion to govern such vote or consent, subject to the other provisions of this **Section 9**; and (2) such rules and procedures may include fixing a record date to determine the Holders that are entitled to vote or provide consent, as applicable, rules governing the solicitation and use of proxies or written consents and customary procedures for the nomination and designation, by Holders, of directors for election; *provided*, *however*, that with respect to any voting rights of the Holders pursuant to **Section 9(b)**, such rules and procedures will be the same rules and procedures that apply to holders of the Common Stock with respect to the applicable matter referred to in **Section 9(b)**.

(ii) *Voting Power of the Convertible Preferred Stock*. Each share of Convertible Preferred Stock will be entitled to one vote on each matter on which the Holders of the Convertible Preferred Stock are entitled to vote separately as a class and not together with the holders of any other class or series of stock.

(iii) *Written Consent in Lieu of Stockholder Meeting*. Notwithstanding anything to the contrary set forth in the Bylaws or otherwise, a consent or affirmative vote of the Holders pursuant to **Section 9(a)** may be given or obtained in writing without a meeting.

SECTION 10. CONVERSION.

(a) *Generally*. Subject to the provisions of this **Section 10**, the Convertible Preferred Stock may be converted only pursuant to a Mandatory Conversion or an Optional Conversion.

(b) *Conversion at the Option of the Holders*.

(i) *Conversion Right; When Shares May Be Submitted for Optional Conversion*. Holders will have the right to submit all, or any whole number of shares that is less than all, of their shares of Convertible Preferred Stock pursuant to an Optional Conversion at any time; *provided*, *however*, that, notwithstanding anything to the contrary in this Certificate of Designation,

(1) if a Fundamental Change Repurchase Notice is validly delivered pursuant to **Section 8(g)(i)** with respect to any share of Convertible Preferred Stock, then such share may not be submitted for Optional Conversion after the Business Day prior to the consummation of the Fundamental Change, except to the extent (A) such share is not subject to such notice; (B) such notice is withdrawn in accordance with **Section 8(g)(iii)**; or (C) the Company fails to pay the Fundamental Change Repurchase Price for such share in accordance with this Certificate of Designation;

(2) no Convertible Preferred Stock may be submitted for Optional Conversion to the extent limited by **Section 10(h)**;

(3) shares of Convertible Preferred Stock that are called for Redemption may not be submitted for Optional Conversion after the Close of Business on the Business Day immediately before the related Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full); and

(4) shares of Convertible Preferred Stock that are subject to Mandatory Conversion may not be submitted for Optional Conversion after the Close of Business on the Business Day immediately before the related Mandatory Conversion Date.

(ii) *Conversions of Fractional Shares Not Permitted*. Notwithstanding anything to the contrary in this Certificate of Designation, in no event will any Holder be entitled to convert a number of shares of Convertible Preferred Stock that is not a whole number.

(c) *Mandatory Conversion at the Company's Election*.

(i) *Mandatory Conversion Right*. Subject to the provisions of this **Section 10**, the Company has the right (the "**Mandatory Conversion Right**"), exercisable at its election, to designate any Business Day on or after the two (2) year anniversary of the Initial Issue Date as a Conversion Date for the conversion (such a conversion, a "**Mandatory Conversion**") of all, but not less than all, of the outstanding shares of Convertible Preferred Stock, but only if the Last Reported Sale Price per share of Common Stock exceeds one hundred and fifty percent (150%) of the Conversion Price on each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before the Mandatory Conversion Notice Date for such Mandatory Conversion.

(ii) *Mandatory Conversion Prohibited in Certain Circumstances*. The Company will not exercise its Mandatory Conversion Right, or otherwise send a Mandatory Conversion Notice, with respect to any Convertible Preferred Stock pursuant to this **Section 10(c)** unless the Common Stock Liquidity Conditions are satisfied with respect to the Mandatory Conversion. Notwithstanding anything to the contrary in this **Section 10(c)**, the Company's exercise of its Mandatory Conversion Right, and any related Mandatory Conversion Notice, will not apply to any share of Convertible Preferred Stock as to which a Fundamental Change Repurchase Notice has been duly delivered, and not withdrawn, pursuant to **Section 8(g)**. Notwithstanding anything to the contrary in this **Section 10(c)**, the Company cannot exercise its Mandatory Conversion Right with respect to any shares of Convertible Preferred Stock to the extent limited by **Section 10(h)**.

(iii) *Mandatory Conversion Date*. The Mandatory Conversion Date for any Mandatory Conversion will be a Business Day of the Company's choosing that is no more than twenty (20), nor less than ten (10), Business Days after the Mandatory Conversion Notice Date for such Mandatory Conversion.

(iv) *Mandatory Conversion Notice*. To exercise its Mandatory Conversion Right with respect to any shares of Convertible Preferred Stock, the Company must send to each Holder of such shares a written notice of such exercise (a "**Mandatory Conversion Notice**").

(v) Such Mandatory Conversion Notice must state:

(1) that the Company has exercised its Mandatory Conversion Right to cause the Mandatory Conversion of the shares of Convertible Preferred Stock, briefly describing the Company's Mandatory Conversion Right under this Certificate of Designation;

(2) the Mandatory Conversion Date for such Mandatory Conversion and the date scheduled for the settlement of such Mandatory Conversion;

(3) the name and address of the Paying Agent and the Conversion Agent, as well as instructions whereby the Holder may surrender such share to the Transfer Agent or Conversion Agent;

(4) that shares of Convertible Preferred Stock subject to Mandatory Conversion may be converted earlier at the option of the Holders thereof pursuant to an Optional Conversion at any time before the Close of Business on the Business Day immediately before the Mandatory Conversion Date; and

(5) the Conversion Price in effect on the Mandatory Conversion Notice Date for such Mandatory Conversion), the number of shares of Common Stock to be issued to such Holder upon conversion of each share of Convertible Preferred Stock held by such Holder and, if applicable, the amount of accumulated and unpaid Regular Dividends in respect of such share of Convertible Preferred Stock as of the Mandatory Conversion Date.

(d) *Conversion Procedures*.

(i) *Mandatory Conversion*. If the Company duly exercises, in accordance with **Section 10(c)**, its Mandatory Conversion Right with respect to any share of Convertible Preferred Stock, then (1) the Mandatory Conversion of such share will occur automatically and without the need for any action on the part of the Holder(s) thereof; and (2) the shares of Common Stock due upon such Mandatory Conversion will be registered in the name of, and, if applicable, the cash due upon such Mandatory Conversion will be delivered to, the Holder(s) of such share of Convertible Preferred Stock as of the Close of Business on the related Mandatory Conversion Date.

(ii) *Requirements for Holders to Exercise Optional Conversion Right*.

(1) *Generally*. To convert any share of Convertible Preferred Stock evidenced by a Certificate pursuant to an Optional Conversion, the Holder of such share must (w) complete, manually sign and deliver to the Conversion Agent an Optional Conversion Notice (at which time, in the case such Certificate is an Electronic Certificate, such Optional Conversion will become irrevocable); (x) if such Certificate is a Physical Certificate, deliver such Physical Certificate to the Conversion Agent (at which time such Optional Conversion will become irrevocable); (y) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (z) if applicable, pay any documentary or other taxes that are required to be paid by the Company as a result of a Holder requesting that shares be registered in a name other than such Holders' name as described in **Section 11(c)**.

(2) *Optional Conversion Permitted only During Business Hours*. Convertible Preferred Stock will be deemed to be surrendered for Optional Conversion only after the Open of Business and before the Close of Business on a day that is a Business Day.

(iii) *Treatment of Accumulated Dividends upon Conversion*.

(1) *No Adjustments for Accumulated Regular Dividends*. Without limiting the operation of **Section 5(b)(i)** and **Section 10(c)(i)**, the Conversion Price will not be adjusted to account for any accumulated and unpaid Regular Dividends on any Convertible Preferred Stock being converted.

(2) *Conversions Between A Record Date and a Dividend Payment Date*. If the Conversion Date of any share of Convertible Preferred Stock to be converted is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then such Dividend will be paid pursuant to **Section 5(d)** notwithstanding such conversion.

(iv) *When Holders Become Stockholders of Record of the Shares of Common Stock Issuable Upon Conversion*. The Person in whose name any share of Common Stock is issuable upon conversion of any Convertible Preferred Stock will be deemed to become the holder of record of such share as of the Close of Business on the Conversion Date for such conversion.

(e) *Settlement upon Conversion*.

(i) *Generally*. Subject to **Section 10(e)(ii)**, **Section 10(h)** and **Section 15(b)**, the consideration due upon settlement of the conversion of each share of Convertible Preferred Stock will consist of a number of shares of Common Stock equal to the quotient obtained by dividing (I) the Liquidation Preference (including any accumulated and unpaid Regular Dividends on such shares of Convertible Preferred Stock to, but excluding, the Conversion Date) for such shares of Convertible Preferred Stock subject to conversion by (II) the Conversion Price, in each case, as of immediately before the Close of Business on such Conversion Date.

(ii) *Payment of Cash in Lieu of any Fractional Share of Common Stock*. Subject to **Section 15(b)**, in lieu of delivering any fractional share of Common Stock otherwise due upon conversion of any Convertible Preferred Stock, the Company will, to the extent it is legally able to do so and permitted under the terms of its indebtedness for borrowed money, pay cash based on the Last Reported Sale Price per share of Common Stock on the Conversion Date for such conversion (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(iii) *Delivery of Conversion Consideration*. Except as provided in **Sections 10(f)(i)(2)** and **10(i)**, the Company will pay or deliver, as applicable, the Conversion Consideration due upon conversion of any Convertible Preferred Stock on or before the second (2nd) Business Day immediately after the Conversion Date for such conversion.

(f) *Conversion Price Adjustments*.

(i) *Events Requiring an Adjustment to the Conversion Price*. The Conversion Price will be adjusted from time to time as follows:

(1) *Stock Dividends, Splits and Combinations*. If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 10(i)** will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where:

CP_0 = the Conversion Price in effect immediately before the Close of Business on the Record Date for such dividend or distribution, or immediately before the Close of Business on the effective date of such stock split or stock combination, as applicable;

CP_1 = the Conversion Price in effect immediately after the Close of Business on such Record Date or effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Close of Business on such Record Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this **Section 10(f)(i)(1)** is declared or announced, but not so paid or made, then the Conversion Price will be readjusted, effective as of the date the Board of Directors, or any Officer acting pursuant to authority conferred by the Board of Directors, determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Price that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(2) *Tender Offers or Exchange Offers*. If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act), and the value (determined as of the Expiration Time by the Board of Directors) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP \times OS_0}{AC + (SP \times OS_1)}$$

where:

CP_0 = the Conversion Price in effect immediately before the time (the "**Expiration Time**") such tender or exchange offer expires;

CP_1 = the Conversion Price in effect immediately after the Expiration Time;

SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the "**Tender/Exchange Offer Valuation Period**") beginning on, and including, the Trading Day immediately after the Expiration Date;

OS_0 = the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

AC = the aggregate value (determined as of the Expiration Time by the Board of Directors) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer; and

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

provided, *however*, that the Conversion Price will in no event be adjusted up pursuant to this **Section 10(f)(i)(2)**, except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Price pursuant to this **Section 10(f)(i)(2)** will be calculated as of the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period but will be given effect immediately after the Expiration Time, with retroactive effect. If the Conversion Date for any share of Convertible Preferred Stock to be converted occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in this Certificate of Designation, the Company will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last Trading Day of the Tender/Exchange Offer Valuation Period.

To the extent such tender or exchange offer is announced but not consummated (including as a result of being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Price will be readjusted to the Conversion Price that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(ii) *No Adjustments in Certain Cases*.

(1) *Certain Events*. Without limiting the operation of **Section 5(b)(i)** and **10(e)(i)**, the Company will not be required to adjust the Conversion Price except pursuant to **Section 10(f)(i)**. Without limiting the foregoing, the Company will not be required to adjust the Conversion Price on account of:

(A) except as otherwise provided in **Section 10(f)(i)**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(B) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any such plan;

(C) the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(D) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Initial Issue Date; or

(E) solely a change in the par value of the Common Stock.

(iii) *Stockholder Rights Plans*. If any shares of Common Stock are to be issued upon conversion of any Convertible Preferred Stock and, at the time of such conversion, the Company has in effect any stockholder rights plan, then the Holder of such Convertible Preferred Stock will be entitled to receive, in addition to, and concurrently with the delivery of, the consideration otherwise due upon such conversion, the rights set forth in such stockholder rights plan.

(iv) *Determination of the Number of Outstanding Shares of Common Stock*. For purposes of **Section 10(f)(i)**, the number of shares of Common Stock outstanding at any time will (1) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (2) exclude shares of Common Stock held in the Company's treasury.

(v) *Calculations*. All calculations with respect to the Conversion Price and adjustments thereto will be made to the nearest 1/100th of a cent (with 5/1,000ths rounded upward).

(vi) *Notice of Conversion Price Adjustments*. Upon the effectiveness of any adjustment to the Conversion Price pursuant to **Section 10(f)(i)**, the Company will promptly send notice to the Holders containing (1) a brief description of the transaction or other event on account of which such adjustment was made; (2) the Conversion Price in effect immediately after such adjustment; and (3) the effective time of such adjustment.

(g) *Voluntary Conversion Price Decreases*.

(i) *Generally*. To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) decrease the Conversion Price by any amount if (1) the Board of Directors determines that such decrease is in the Company's best interest or that such decrease is advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (2) such decrease is in effect for a period of at least twenty (20) Business Days; and (3) such decrease is irrevocable during such period; *provided*, *however*, that any such decrease that would be reasonably expected to result in any income tax imposed on holders of Convertible Preferred Stock shall require the affirmative vote or consent of Holders, voting exclusively as a single class, constituting a majority of the voting power of the outstanding shares of Convertible Preferred Stock.

(ii) *Notice of Voluntary Decrease*. If the Board of Directors determines to decrease the Conversion Price pursuant to **Section 10(g)(i)**, then, no later than the first Business Day of the related twenty (20) Business Day period referred to in **Section 10(g)(i)**, the Company will send notice to each Holder, the Transfer Agent and the Conversion Agent of such decrease to the Conversion Price, the amount thereof and the period during which such decrease will be in effect.

(h) *Restriction on Conversions*.

(i) *Equity Treatment Limitation*.

(1) *Generally*. Notwithstanding anything to the contrary in this Certificate of Designation, the Company will in no event be required to deliver any shares of Common Stock in settlement of the conversion of any Convertible Preferred Stock to the extent, but only to the extent, the Company does not then have sufficient authorized and unissued shares of Common Stock that are not reserved for other purposes (the limitation set forth in this sentence, the "**Equity Treatment Limitation**," and any shares of Common Stock that would otherwise be deliverable in excess of the number of such authorized and unissued shares, the "**Deficit Shares**"). If any Deficit Shares are withheld pursuant to the Equity Treatment Limitation and, at any time thereafter, some or all of such Deficit Shares could be delivered without violating the Equity Treatment Limitation, then (A) the Company will deliver such Deficit Shares to the extent, but only to the extent, such delivery is permitted by the Equity Treatment Limitation; and (B) the provisions of this sentence will continue to apply until there are no remaining Deficit Shares.

(2) *Share Reserve Provisions*. On the Initial Issue Date, the Number of Reserved Shares is not less than the Initial Share Reserve Requirement. The Company shall at all times reserve and keep available a Number of Reserved Shares to be no less than the Continuing Share Reserve Requirement at any time when any Convertible Preferred Stock is outstanding (including, if applicable, by seeking the approval of its stockholders to amend the Articles of Incorporation to increase the number of authorized shares of Common Stock).

(3) *Limitation on Certain Transactions*. The Company will not, without the prior written consent of Holders of a majority of the Convertible Preferred Stock then outstanding, effect any transaction that would require an adjustment to the Conversion Price pursuant to **Section 10(f)(i)** if the settlement of the conversion of all Convertible Preferred Stock then outstanding (assuming such conversion occurred immediately after giving effect to such adjustment) would result in any Deficit Shares pursuant to the Equity Treatment Limitation.

(i) *Effect of Common Stock Change Event*.

(i) *Generally*. If there occurs any:

(1) recapitalization, reclassification or change of the Common Stock, other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value or (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities;

(2) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(3) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(4) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "**Common Stock Change Event**," and such other securities, cash or property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in this Certificate of Designation,

(A) from and after the effective time of such Common Stock Change Event, (I) the consideration due upon conversion of any Convertible Preferred Stock will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Section 10** or in **Section 11**, or in any related definitions, were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 7** and **Section 10(c)**, each reference to any number of shares of Common Stock in such Sections (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definitions of "Fundamental Change," the terms "Common Stock" and "common equity" will be deemed to mean the common equity (including depositary receipts representing common equity), if any, forming part of such Reference Property; and

(B) if such Reference Property Unit consists entirely of cash, then the Company will pay the cash due in respect of all conversions whose Conversion Date occurs on or after the effective date of such Common Stock Change Event no later than the tenth (10th) Business Day after the relevant Conversion Date; and

(C) for these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of "Daily VWAP," substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of common equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify the Holders of such weighted average as soon as practicable after such determination is made.

(ii) *Compliance Covenant*. The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 10(i)**.

(iii) *Execution of Supplemental Instruments*. On or before the date the Common Stock Change Event becomes effective, the Company and, if applicable, the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver such supplemental instruments, if any, as the Company reasonably determines are necessary or desirable to (1) provide for subsequent adjustments to the Conversion Price pursuant to **Section 10(f)(i)** in a manner consistent with this **Section 10(i)**; and (2) give effect to such other provisions, if any, as the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to **Section 10(i)(i)**. If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such supplemental instrument(s) and such supplemental instrument(s) will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of Holders.

(iv) *Notice of Common Stock Change Event*. The Company will provide notice of each Common Stock Change Event to Holders as promptly as possible after the effective date of the Common Stock Change Event.

SECTION 11. CERTAIN PROVISIONS RELATING TO THE ISSUANCE OF COMMON STOCK.

(a) *Equitable Adjustments to Prices*. Whenever this Certificate of Designation requires the Company to calculate the average of the Last Reported Sale Prices or Daily VWAPs, or any function thereof, over a period of multiple days (including to calculate an adjustment to the Conversion Price), the Company will make appropriate adjustments, if any, to those calculations to account for any adjustment to the Conversion Price pursuant to **Section 10(f)(i)** that becomes effective, or any event requiring such an adjustment to the Conversion Price where the Ex-Dividend Date, effective date or Expiration Date, as applicable, of such event occurs, at any time during such period.

(b) *Status of Shares of Common Stock*. Each share of Common Stock delivered upon conversion of the Convertible Preferred Stock of any Holder will be a newly issued share and will be duly authorized and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of such Holder or the Person to whom such share of Common Stock will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each such share of Common Stock, when so delivered, to be admitted for listing on such exchange or quotation on such system.

(c) *Taxes Upon Issuance of Common Stock*. The Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon conversion of the Convertible Preferred Stock of any Holder, except any tax or duty that is due because such Holder requests those shares to be registered in a name other than such Holder's name.

Section 12. No Preemptive Rights. Without limiting the rights of the Holder set forth in this Certificate of Designation (including in connection with the issuance of Common Stock or Reference Property upon conversion of the Convertible Preferred Stock), the Convertible Preferred Stock will not have any preemptive rights to subscribe for or purchase any of the Company's securities.

Section 13. Taxes. The Company shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of shares of Convertible Preferred Stock or shares of Common Stock or other securities issued on account of Convertible Preferred Stock pursuant hereto or certificates evidencing such shares or securities. However, in the case of conversion of Convertible Preferred Stock, the Company shall not be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Convertible Preferred Stock, shares of Common Stock or other securities to a beneficial owner other than the beneficial owner of the Convertible Preferred Stock immediately prior to such conversion, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Company the amount of any such tax or has established, to the satisfaction of the Company, that such tax has been paid or is not payable.

Section 14. Term. Except as expressly provided in this Certificate of Designation, the shares of Convertible Preferred Stock shall not be redeemable or otherwise mature and the term of the Convertible Preferred Stock shall be perpetual.

Section 15. Calculations.

(a) *Responsibility; Schedule of Calculations*. Except as otherwise provided in this Certificate of Designation, the Company will be responsible for making all calculations called for under this Certificate of Designation or the Convertible Preferred Stock, including determinations of the Conversion Price, the Daily VWAPs, the Last Reported Sale Prices and accumulated Regular Dividends on the Convertible Preferred Stock. The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of such calculations to any Holder upon written request.

(b) *Calculations Aggregated for Each Holder*. The composition of the Conversion Consideration due upon conversion of the Convertible Preferred Stock of any Holder will be computed based on the total number of shares of Convertible Preferred Stock of such Holder being converted with the same Conversion Date. For these purposes, any cash amounts due to such Holder in respect thereof will be rounded to the nearest cent.

Section 16. NOTICES. The Company will send all notices or communications to Holders pursuant to this Certificate of Designation in writing and delivered personally, by facsimile or e-mail (with confirmation of receipt requested from the recipient, in the case of e-mail), or sent by a nationally recognized overnight courier service guaranteeing next day delivery, to the Holders' respective addresses shown on the Register. Unless otherwise specified herein, all notices and communications hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service.

Section 17. FACTS ASCERTAINABLE. When the terms of this Certificate of Designation refers to a specific agreement or other document to determine the meaning or operation of a provision hereof, the Secretary of the Company shall maintain a copy of such agreement or document at the principal executive offices of the Company and a copy thereof shall be provided free of charge to any Holder who makes a request therefor. The Secretary of the Company shall also maintain a written record of the Initial Issue Date, the number of shares of Convertible Preferred Stock issued to a Holder and the date of each such issuance, and shall furnish such written record free of charge to any Holder who makes a request therefor.

Section 18. WAIVER. Notwithstanding any provision in this Certificate of Designation to the contrary, any provision contained herein and any right of the Holders of Convertible Preferred Stock granted hereunder may be waived as to all shares of Convertible Preferred Stock (and the Holders thereof) upon the vote or written consent of the Holders of a majority of the shares of Convertible Preferred Stock then outstanding.

Section 19. SEVERABILITY. If any term of the Convertible Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.

Section 20. NO OTHER RIGHTS. The Convertible Preferred Stock will have no rights, preferences or voting powers except as provided in this Certificate of Designation or the Articles of Incorporation or as required by applicable law.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be duly executed as of the date first written above.

CRYOPORT, INC.

By: _____
Name:
Title:

[Signature Page to Certificate of Designation]

EXHIBIT A

FORM OF PREFERRED STOCK CERTIFICATE

[*Insert Restricted Stock Legend, if applicable*]

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

Certificate No. [___]

Cryoport, Inc., a Nevada corporation (the "**Company**"), certifies that [___] is the registered owner of [___] shares of the Company's 4.0% Series C Convertible Preferred Stock (the "**Convertible Preferred Stock**") evidenced by this certificate (this "**Certificate**"). The special rights, preferences and voting powers of the Convertible Preferred Stock are set forth in the Certificate of Designation of the Company establishing the Convertible Preferred Stock (the "**Certificate of Designation**"). Capitalized terms used in this Certificate without definition have the respective meanings ascribed to them in the Certificate of Designation.

Additional terms of this Certificate are set forth on the other side of this Certificate.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

IN WITNESS WHEREOF, Cryoport, Inc. has caused this instrument to be duly executed as of the date set forth below.

CRYOPORT, INC.

Date: _____ By: _____
Name:
Title:

Date: _____ By: _____
Name:
Title:

TRANSFER AGENT'S COUNTERSIGNATURE

[*legal name of Transfer Agent*], as Transfer Agent, certifies that this Certificate evidences shares of Convertible Preferred Stock referred to in the within-mentioned Certificate of Designation.

Date: _____ By: _____
Authorized Signatory

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

This Certificate evidences duly authorized, issued and outstanding shares of Convertible Preferred Stock. Notwithstanding anything to the contrary in this Certificate, to the extent that any provision of this Certificate conflicts with the provisions of the Certificate of Designation or the Articles of Incorporation, the provisions of the of the Certificate of Designation or the Articles of Incorporation, as applicable, will control.

1. **Countersignature**. This Certificate will not be valid until countersigned by the Transfer Agent.

2. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

* * *

To request a copy of the Certificate of Designation, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Cryoport, Inc.
112 Westwood Place, Suite 350
Brentwood, TN 37027
Attention: (i) Jerrell Shelton, President, Chief Executive Officer, and Chairman of the Board, (ii) Robert Stefanovich, Chief Financial Officer, Treasurer and Corporate Secretary, and (iii) Tony Ippolito, Vice President and General Counsel

OPTIONAL CONVERSION NOTICE

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, by executing and delivering this Optional Conversion Notice, the undersigned Holder of the Convertible Preferred Stock identified below directs the Company to convert (check one):

o all of the shares of Convertible Preferred Stock

o _____ * shares of Convertible Preferred Stock

evidenced by Certificate No. _____.

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

* Must be a whole number.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Convertible Preferred Stock identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

o all of the shares of Convertible Preferred Stock

o _____* shares of Convertible Preferred Stock

evidenced by Certificate No. _____.

The undersigned acknowledges that Certificate identified above, duly endorsed for transfer, must be delivered to the Paying Agent before the Fundamental Change Repurchase Price will be paid.

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

* Must be a whole number.

ASSIGNMENT FORM

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, the undersigned Holder of the within Convertible Preferred Stock assigns to:

Name: _____

Address: _____

Social security or
tax identification
number: _____

the within Convertible Preferred Stock and all rights thereunder irrevocably appoints:

as agent to transfer the within Convertible Preferred Stock on the books of the Company. The agent may substitute another to act for him/her.

Date: _____ _____
(Legal Name of Holder)

By: _____
Name:
Title:

EXHIBIT B

FORM OF RESTRICTED STOCK LEGEND

THE OFFER AND SALE OF THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY AND SUCH SHARES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT; OR (B) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Exhibit C

Form of Registration Rights Agreement

(see attached)

Form Final

FORM OF REGISTRATION RIGHTS AGREEMENT

BY AND BETWEEN

CRYOPORT, INC.

AND

BTO FREEZE PARENT L.P.

Dated as of [●], 2020

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "**Agreement**") is entered into as of [˜], 2020, by and between Cryoport, Inc., a Nevada corporation (including its successors and permitted assigns, the "**Company**"), and BTO Freeze Parent L.P., a Delaware limited partnership (the "**Investor**"). Capitalized terms used but not defined elsewhere herein are defined in Exhibit A.

This Agreement is entered into in connection with the closing of the issuance of 250,000 shares of the Series C Convertible Preferred Stock, which are convertible into shares of Common Stock, and 675,536 shares of Common Securities Pursuant to the Securities Purchase Agreement, dated as of August 24, 2020, by and between the Company and the Investor (the "**Securities Purchase Agreement**").

As a condition to each of the parties' obligations under the Securities Purchase Agreement, the Company and the Investor are entering into this Agreement for the purpose of granting certain registration rights to the Investor.

In consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
RESALE SHELF REGISTRATION

Section 1.1 Resale Shelf Registration Statement. Subject to the other applicable provisions of this Agreement, the Company shall file within ninety (90) days of the date hereof and use its commercially reasonable efforts to cause to go effective as promptly as practicable a registration statement covering the sale or distribution from time to time by the Holders, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act of all of the Registrable Securities on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form (including Form S-1) and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders) (the "**Resale Shelf Registration Statement**" and such registration, the "**Resale Shelf Registration**"), and if the Company is a WKSI as of the filing date, the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement. If the Resale Shelf Registration Statement is not an Automatic Shelf Registration Statement, then the Company shall use its commercially reasonable efforts to cause such Resale Shelf Registration Statement to be declared effective by the Commission as promptly as practicable after the filing thereof.

Notwithstanding the foregoing, if the Commission prevents the Company from including any or all of the Registrable Securities on the Resale Shelf Registration Statement due to limitations on the use of Rule 415 of the Securities Act for the resale of the Registrable Securities by the Holders (a "**Rule 415 Limitation**"), the Resale Shelf Registration Statement shall register the resale of a number of shares of the Registrable Securities which is equal to the maximum number of shares as is permitted by the Commission, and, subject to the provisions of this Section 1.1, the Company shall continue to its use commercially reasonable efforts to register all remaining Registrable Securities as set forth in this Section 1.1. In such event, the number of shares of Registrable Securities to be registered for each Holder in the Resale Shelf Registration Statement shall be reduced pro rata among all Holders, provided, however, that, prior to reducing the number of shares of Registrable Securities to be registered for any Holder in such Resale Shelf Registration Statement, the Company shall first remove any shares of Registrable Securities to be registered for any Person other than a Holder that was proposed to be included in such Resale Shelf Registration Statement. The Company shall continue to use its commercially reasonable efforts to register all remaining Registrable Securities as promptly as practicable in accordance with the applicable rules, regulations and guidance of the Commission. Notwithstanding anything herein to the contrary, if the Commission, by written comment, limits the Company's ability to file, or prohibits or delays the filing of, a Resale Shelf Registration Statement or a Subsequent Shelf Registration with respect to any or all the Registrable Securities, the Company's compliance with such limitation, prohibition or delay solely to the extent of such limitation, prohibition or delay shall not be a breach or default by the Company under this Agreement and shall not be deemed a failure by the Company to use "commercially reasonable efforts" or "reasonable efforts" as set forth above or elsewhere in this Agreement.

Section 1.2 Effectiveness Period. Once effective, the Company shall, subject to the other applicable provisions of this Agreement, use its commercially reasonable efforts to cause the Resale Shelf Registration Statement or a Subsequent Shelf Registration to be continuously effective and usable for so long as any Registrable Securities remain outstanding (the "**Effectiveness Period**").

Section 1.3 Subsequent Shelf Registration. If any Shelf Registration ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period, the Company shall use its commercially reasonable efforts to promptly cause such Shelf Registration to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration), and in any event shall within thirty (30) days of such cessation of effectiveness, amend such Shelf Registration in a manner reasonably expected to obtain the withdrawal of any order suspending the effectiveness of such Shelf Registration or, file an additional registration statement (a "**Subsequent Shelf Registration**") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by Holders thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration is filed, the Company shall use its commercially reasonable efforts to (a) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after such filing, but in no event later than the date that is ninety (90) days after such Subsequent Shelf Registration is filed and (b) keep such Subsequent Shelf Registration (or another Subsequent Shelf Registration) continuously effective until the end of the Effectiveness Period. Any such Subsequent Shelf Registration shall be a Registration Statement on Form S-3 to the extent that the Company is eligible to use such form, and if the Company is a WKSI as of the filing date, such Registration Statement shall be an Automatic Shelf Registration Statement. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form (including Form S-1) and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders.

Section 1.4 Supplements and Amendments. The Company shall supplement and amend any Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration if required by the Securities Act or as reasonably requested by the Holders covered by such Shelf Registration.

Section 1.5 Subsequent Holder Notice. If a Person becomes a Holder of Registrable Securities after a Shelf Registration becomes effective under the Securities Act, the Company shall, as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming a Holder and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration (a "**Subsequent Holder Notice**"):

(a) if required and permitted by applicable law, file with the Commission a supplement to the related prospectus or a post-effective amendment to the Shelf Registration so that such Holder is named as a selling securityholder in the Shelf Registration and the related prospectus in such a manner as to permit such Holder to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law;

(b) if, pursuant to Section 1.5(a), the Company shall have filed a post-effective amendment to the Shelf Registration that is not automatically effective, use its commercially reasonable efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is reasonably practicable, but in any event by the date that is ninety (90) days after the date such post-effective amendment is required by Section 1.5(a) to be filed; and

(c) notify such Holder as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 1.5(a).

Section 1.6 Underwritten Offering. The Holders of Registrable Securities may on up to four (4) occasions after the Resale Shelf Registration Statement becomes effective deliver a written notice to the Company specifying that the sale of some or all of the Registrable Securities subject to the Shelf Registration is intended to be conducted through an underwritten offering, so long as the anticipated gross proceeds of such underwritten offering is not less than thirty-five million dollars ($35,000,000) (unless the Holders are proposing to sell all of their remaining Registrable Securities in which case no such minimum gross proceeds threshold shall apply) (the "**Underwritten Offering**"). In the event of an Underwritten Offering:

(a) The Holder or Holders of a majority of the Registrable Securities participating in an Underwritten Offering shall select the managing underwriter or underwriters to administer the Underwritten Offering; provided that such Holder or Holders will not make the choice of such managing underwriter or underwriters without first consulting with the Company.

(b) Notwithstanding any other provision of this Section 1.6, if the managing underwriter or underwriters of a proposed Underwritten Offering advises the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in such Underwritten Offering exceeds the number which can be sold in such Underwritten Offering in light of market conditions, the Registrable Securities shall be included on a pro rata basis upon the number of securities that each Holder shall have requested to be included in such offering. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters.

(c) The Company shall agree and shall cause its executive officers and directors to sign a customary "lock-up" agreement with the underwriters in any Underwritten Offering.

Section 1.7 Take-Down Notice. Subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if a Holder delivers a notice to the Company (a "**Take-Down Notice**") stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement (a "**Shelf Offering**") and stating the number of Registrable Securities to be included in such Shelf Offering, then, subject to the other applicable provisions of this Agreement, the Company shall, as promptly as practicable, amend or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

ARTICLE II
COMPANY REGISTRATION

Section 2.1 Notice of Registration. If at any time or from time to time the Company shall determine to file a registration statement with respect to an offering (or to make an underwritten public offering pursuant to a previously filed registration statement) of its Common Stock, whether or not for its own account (other than a registration statement on Form S-4, Form S-8 or any successor forms), the Company will:

(a) promptly give to each Holder written notice thereof, which notice shall be given, to the extent reasonably practicable, no later than five (5) business days prior to the filing or launch date (except in the case of an offering that is an "overnight offering", in which case such notice must be given no later than two (2) business days prior to the filing or launch date); and

(b) subject to Section 2.2, include in such registration or underwritten offering (and any related qualification under blue sky laws or other compliance) all the Registrable Securities specified in a written request or requests made within three (3) business days after receipt of such written notice from the Company by any Holder (except in the case of an offering that is an "overnight offering", in which case such request must be made no later than one (1) business day after receipt of such written notice from the Company).

Section 2.2 Underwriting. The right of any Holder to registration pursuant to Section 1.6 or this Article II shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Registrable Securities in the underwriting to the extent provided herein. Each Holder proposing to distribute its securities through such underwriting shall (together with the Company and the other holders distributing their securities through such underwriting) enter into and perform such Holder's obligations under an underwriting agreement with the managing underwriter selected for such underwriting by the Company or by the stockholders of the Company who have the right to select the underwriters (such underwriting agreement to be in a customary form negotiated by the Company or such stockholders, as the case may be). Notwithstanding any other provision of this Article II, if the managing underwriter or underwriters of a proposed underwritten offering with respect to which Holders of Registrable Securities have exercised their piggyback registration rights advise the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in the offering thereby and all other securities proposed to be sold in the offering exceeds the number which can be sold in such underwritten offering in light of market conditions, the Registrable Securities and such other securities to be included in such underwritten offering shall be allocated, (a) first, in the event such offering was initiated by the Company for its own account, up to the total number of securities that the Company has requested to be included in such registration, (b) second, and only if all the securities referred to in clause (a) have been included, up to the total number of securities that the Holders have requested to be included in such offering (pro rata based upon the number of securities that each of them shall have requested to be included in such offering) and (c) third, and only if all the securities referred to in clause (b) have been included, all other securities proposed to be included in such offering that, in the opinion of the managing underwriter or underwriters can be sold without having such adverse effect. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters. Any securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

Section 2.3 Right to Terminate Registration. The Company or the holders of securities who have caused a registration statement to be filed as contemplated by this Article II, as the case may be, shall have the right to have any registration initiated by it or them under this Article II terminated or withdrawn prior to the effectiveness thereof, whether or not any Holder has elected to include securities in such registration.

ARTICLE III
ADDITIONAL PROVISIONS REGARDING REGISTRATION RIGHTS

Section 3.1 Registration Procedures. In the case of each registration effected by the Company pursuant to Article I or II, the Company will keep each Holder participating in such registration reasonably informed as to the status thereof and, at its expense, the Company will, as expeditiously as possible to the extent applicable:

(a) prepare and file, as promptly as reasonably practicable, with the Commission a registration statement with respect to such securities in accordance with the applicable provisions of this Agreement;

(b) prepare and file, as promptly as reasonably practicable, with the Commission such amendments, including post-effective amendments, and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement (including to permit the intended method of distribution thereof) and as may be necessary to keep the registration statement continuously effective for the period set forth in this Agreement;

(c) furnish to the Holders participating in such registration and to their legal counsel copies of the registration statement proposed to be filed, and provide such Holders and their legal counsel the reasonable opportunity to review and comment on such registration statement;

(d) furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus and final prospectus as the such underwriters may reasonably request in order to facilitate the public offering of such securities;

(e) use commercially reasonable efforts to notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the Company's knowledge of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing, and, subject to Section 3.1(n), at the request of any such Holder, prepare promptly and furnish to such Holder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchaser of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing;

(f) use commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions in which it is not already qualified;

(g) in the event that the Registrable Securities are being offered in an underwritten public offering, enter into and perform its obligations under an underwriting agreement on customary terms and in accordance with the applicable provisions of this Agreement;

(h) use commercially reasonable efforts to furnish, (i) on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, an opinion and negative assurance letter, dated as of such date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) on the date that the offering of such Registrable Securities is priced and on the date that such securities are being sold through underwriters, a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(i) in connection with a customary due diligence review, make available during business hours for inspection by the Holders, any underwriter participating in any such disposition of Registrable Securities, if any, and any counsel or accountants retained by the Holders or underwriter (collectively, the "**Offering Persons**"), all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the officers, directors and employees of the Company and its subsidiaries to supply all relevant information and participate in customary due diligence sessions in each case reasonably requested by any such representative, underwriter, counsel or accountant in connection with such registration statement, provided, however, each such underwriter shall agree in writing to hold in strict confidence and not to make any disclosure or use of any information requested above (the "**Requested Information**"), unless (1) the disclosure of the Requested Information is necessary to avoid or correct a misstatement or omission in such registration or is otherwise required under the Securities Act, (2) the release of the Requested Information is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, (3) the Requested Information is or has been made generally available to the public other than by disclosure in violation of this Agreement, (4) the Requested Information was within such underwriter's possession on a non-confidential basis prior to it being furnished to such underwriter by or on behalf of the Company or any of its representatives, provided that the source of such information was not bound by a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality with respect to such information or (5) the Requested Information becomes available to such underwriter on a non-confidential basis from a source other than the Company or any of its representatives, provided that such source is not bound by a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality with respect to such information. Such underwriter agrees that it shall, upon learning that disclosure of the Requested Information is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Requested Information deemed confidential;

(j) in the event that any broker-dealer underwrites any Registrable Securities or participates as a member of an underwriting syndicate or selling group or "participates in an offering" (within the meaning of the FINRA Rules) thereof, whether as a Holder or as an underwriter, placement, sales agent or broker or dealer in respect thereof, or otherwise, the Company will, upon the reasonable request of such broker-dealer, comply with any reasonable request of such broker-dealer in complying with the FINRA Rules;

(k) notwithstanding any other provision of this Agreement, if the Board of Directors of the Company has determined in good faith that the disclosure necessary for continued use of the prospectus and registration statement by the Holders could be materially detrimental to the Company, the Company shall have the right not to file or not to cause the effectiveness of any registration covering any Registrable Securities and to suspend the use of the prospectus and the registration statement covering any Registrable Security for such period of time as its use would be materially detrimental to the Company by delivering written notice of such suspension to all Holders listed on the Company's records; provided, however, that in any 12-month period the Company may exercise the right to such suspension not more than twice. From and after the date of a notice of suspension under this Section 3.1(k), each Holder agrees not to use the prospectus or registration statement until the earlier of (i) notice from the Company that such suspension has been lifted or (ii) the day following the sixtieth (60^{th}) day of suspension within any 12-month period;

(l) cooperate with, and direct the Company's transfer agent to cooperate with, the Holders and the managing underwriters, if any, to facilitate the timely settlement of any offering or sale of Registrable Securities, including the preparation and delivery of certificates or book-entry representing Registrable Securities to be sold together with any other authorizations, certificates, opinions and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without restriction upon sale by the holder of such shares of Registrable Securities;

(m) use its reasonable best efforts to cause all shares of Registrable Securities to be listed on the national securities exchange on which the Common Stock is then listed; and

(n) cause its officers to use their reasonable best efforts to support the marketing of the Registrable Securities (including, without limitation, participation in "road shows" and other customary marketing activities, which may be virtual).

Section 3.2 Limitation on Subsequent Registration Rights. From and after the date hereof, the Company shall not enter into any agreement granting any holder or prospective holder of any securities of the Company registration rights with respect to such securities that conflict with the rights granted to the Holders herein, without the prior written consent of Holders of a majority of the Registrable Securities.

Section 3.3 Expenses of Registration. All Registration Expenses incurred in connection with any registration pursuant to this Agreement or otherwise in complying with this Agreement shall be borne by the Company. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the Holders of the registered securities included in such registration.

Section 3.4 Information by Holders. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders, the Registrable Securities held by them and the distribution proposed by such Holder or Holders as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement. It is understood and agreed that the obligations of the Company under Article I or II are conditioned on the timely provisions of the foregoing information by such Holder or Holders and, without limitation of the foregoing, will be conditioned on compliance by such Holder or Holders with the following:

(a) such Holder or Holders will cooperate with the Company in connection with the preparation of the applicable registration statement, and for so long as the Company is obligated to keep such registration statement effective, such Holder or Holders will provide to the Company, in writing and in a timely manner, for use in such registration statement (and expressly identified in writing as such), all information regarding themselves and such other information as may be required by applicable law to enable the Company to prepare such registration statement and the related prospectus covering the applicable Registrable Securities owned by such Holder or Holders and to maintain the currency and effectiveness thereof;

(b) during such time as such Holder or Holders may be engaged in a distribution of the Registrable Securities, such Holder or Holders will comply with all laws applicable to such distribution, including Regulation M promulgated under the Exchange Act, and, to the extent required by such laws, will, among other things: (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws and (ii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Holder or Holders, such copies of the applicable prospectus (as amended and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree; and

(c) on receipt of written notice from the Company of the happening of any of the events specified in Section 3.1(k), or that requires the suspension by such Holder or Holders of the distribution of any of the Registrable Securities owned by such Holder or Holders pursuant to a registered offering, then such Holders shall cease offering or distributing the Registrable Securities owned by such Holder or Holders in a registered offering until the offering and distribution of the Registrable Securities owned by such Holder or Holders may recommence in accordance with the terms hereof and applicable law.

Section 3.5 Rule 144 Reporting. With a view to making available the benefits of Rule 144 to the Holders, the Company agrees that it will file with the Commission the "Form 10 information" required by Rule 144(i)(2) as soon as practical after the date of this Agreement and, for so long as a Holder owns Registrable Securities, the Company will use commercially reasonable efforts to:

(a) file with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(b) so long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act.

Section 3.6 "Market Stand-Off" Agreement. The Holders shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities of the Company) held by the Holders (other than those included in the registration) for a period specified by the representatives of the managing underwriter or underwriters of Common Stock (or other securities of the Company convertible into Common Stock) not to exceed five (5) days prior and ninety (90) days following any registered public sale of securities by the Company in which such Holder participates in accordance with Article II, subject to customary exceptions (including, without limitation, to the extent that any securities of the Company are subject to a Permitted Loan (as defined in the Securities Purchase Agreement), to permit the pledge of such securities pursuant to such Permitted Loan and any foreclosure in connection with such Permitted Loan, or transfer in lieu of a foreclosure thereunder, and subsequent sales, dispositions or other transfers). Each of the Holders also shall execute and deliver any "lock-up" agreement reasonably requested by the representatives of any underwriters of the Company in connection with an offering in which such Holder participates, subject to customary exceptions (including, without limitation, as described in the preceding sentence in respect of a Permitted Loan).

ARTICLE IV
INDEMNIFICATION

Section 4.1 Indemnification by Company. To the extent permitted by applicable law, the Company will, with respect to any Registrable Securities as to which registration or qualification or compliance under applicable "blue sky" laws has been effected pursuant to this Agreement, indemnify each Holder, each Holder's current and former officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees, and each Person controlling such Holder or any of the foregoing within the meaning of Section 15 of the Securities Act, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "**Company Indemnified Parties**"), against all expenses, claims, losses, damages, costs (including costs of preparation and reasonable attorney's fees and any legal or other fees or expenses actually incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other liabilities, joint or several (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of, or any rule or regulation promulgated under, the Securities Act, Exchange Act or state securities laws applicable to the Company in connection with any such registration, and the Company will reimburse each of the Company Indemnified Parties for any reasonable legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred. The indemnity agreement contained in this Section 4.1 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to a Holder in any such case for any such loss, claim, damage, liability or action (a) to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by or on behalf of any Holder or (b) in the case of a sale directly by a Holder of Registrable Securities (including a sale of such Registrable Securities through any underwriter retained by such Holder engaging in a distribution solely on behalf of such Holder), such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and such Holder failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act.

Section 4.2 Indemnification by Holders. To the extent permitted by applicable law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration or qualification or compliance under applicable "blue sky" laws is being effected, indemnify, severally and not jointly, the Company, each of its directors, officers, partners, members, managers, shareholders, accountants, attorneys, agents and employees, each underwriter, if any, of the Company's securities covered by such a registration, each Person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, and each other Holder and each of such other Holder's officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees and each Person controlling such Holder or any of the foregoing within the meaning of Section 15 of the Securities Act (collectively, the "**Holder Indemnified Parties**"), against all expenses, claims, losses, damages, costs (including costs of preparation and reasonable attorney's fees and any legal or other fees or expenses actually incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by such Holder of, or any rule or regulation promulgated under, the Securities Act, Exchange Act or state securities law applicable to such Holder, and will reimburse each of the Holder Indemnified Parties for any reasonable legal or any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein, provided, however, that in no event shall any indemnity under this Section 4.2 payable by a Holder exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. The indemnity agreement contained in this Section 4.2 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the applicable Holder (which consent shall not be unreasonably withheld or delayed), nor shall the Holder be liable for any such loss, claim, damage, liability or action where such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and the Company or the underwriters failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act

Section 4.3 Notification. Each party entitled to indemnification under this Article IV (the "**Indemnified Party**") shall give notice to the party required to provide indemnification (the "**Indemnifying Party**") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided, however, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld or delayed), and the Indemnified Party may participate in such defense at such party's expense; provided, further, however, that an Indemnified Party (together with all other Indemnified Parties) shall have the right to retain one (1) separate counsel, with the reasonable fees and expenses to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to conflicting interests between such Indemnified Party and any other party represented by such counsel in such proceeding. The failure of any Indemnified Party to give notice as provided herein shall relieve the Indemnifying Party of its obligations under this Article IV, only to the extent that, the failure to give such notice is materially prejudicial or harmful to an Indemnifying Party's ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the prior written consent of each Indemnified Party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. The indemnity agreements contained in this Article IV shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. The indemnification set forth in this Article IV shall be in addition to any other indemnification rights or agreements that an Indemnified Party may have.

Section 4.4 Contribution. If the indemnification provided for in this Article IV is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any claim, loss, damage, liability or action referred to therein, then, subject to the limitations contained in Article IV, the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such claim, loss, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the actions that resulted in such claims, loss, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact related to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were based solely upon the number of entities from whom contribution was requested or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 4.4. In no event shall any Holder's contribution obligation under this Section 4.4 exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. No Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

ARTICLE V
TRANSFER AND TERMINATION OF REGISTRATION RIGHTS

Section 5.1 Transfer of Registration Rights. The rights to cause the Company to register securities granted to a Holder under this Agreement may be assigned to any Person in connection with any Transfer (as defined in the Securities Purchase Agreement) or assignment of Registrable Securities to in a Transfer permitted by Section 4.2 of the Securities Purchase Agreement; provided, however, that (a) such transfer may otherwise be effected in accordance with applicable securities laws, (b) prior written notice of such assignment is given to the Company, and (c) such transferee agrees in writing to be bound by, and subject to, this Agreement as a "Holder" pursuant to a written instrument in form and substance reasonably acceptable to the Company.

Section 5.2 Termination of Registration Rights. The rights of any particular Holder to cause the Company to register securities under Articles I and II shall terminate with respect to such Holder upon the date upon which such Holder no longer holds any Registrable Securities.

ARTICLE VI
MISCELLANEOUS.

Section 6.1 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when one or more counterparts have been signed by a party and delivered to the other parties. Copies of executed counterparts transmitted by telecopy, telefax or other electronic transmission service shall be considered original executed counterparts for purposes of this Section 6.1, provided that receipt of copies of such counterparts is confirmed.

Section 6.2 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the state of New York (except to the extent that mandatory provisions of the laws of the state of Nevada are applicable), without giving effect to any choice of law or conflict of law rules or provisions (whether of the state of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of New York.

(b) Any dispute relating hereto shall be heard in the U.S. District Court for the Southern District of New York (and any federal appellate courts therefrom) (and to the extent such court declines jurisdiction, state court located in the Borough of Manhattan) (each a "**Chosen Court**" and collectively, the "**Chosen Courts**"), and the parties agree to the exclusive jurisdiction and venue of the Chosen Courts. Such Persons further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the "**Applicable Matters**") shall be brought exclusively in a Chosen Court, and that any proceeding arising out of this Agreement or any other Applicable Matter shall be deemed to have arisen from a transaction of business in the state of New York, and each of the foregoing Persons hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such Person may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum.

(c) Such Persons further covenant not to bring a proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court.

(d) Process in any such proceeding may be served on any Person with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of process on such party as provided in Section 6.5 shall be deemed effective service of process on such Person.

(e) Waiver of Jury Trial. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

Section 6.3 Entire Agreement; No Third Party Beneficiary. This Agreement and the Securities Purchase Agreement contain the entire agreement by and among the parties with respect to the subject matter hereof and all prior negotiations, writings and understandings relating to the subject matter of this Agreement. Except as provided in Article IV, this Agreement is not intended to confer upon any Person not a party hereto (or their successors and permitted assigns) any rights or remedies hereunder.

Section 6.4 Expenses. Except as provided in Section 3.3, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including accounting and legal fees shall be paid by the party incurring such expenses. The fees specified in clause (b) of the definition of "Registration Expenses" incurred in connection with any Shelf Registration or Underwritten Offering pursuant to this Agreement shall, in each case, not exceed $50,000.

Section 6.5 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier, one (1) Business Day after mailing; (c) if sent by e-mail transmission, with a copy sent on the same day in the manner provided in the foregoing clause (a) or (b), when transmitted and receipt is confirmed; and (d) if otherwise actually personally delivered, when delivered, provided, that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

If to the Company, to:

Cryoport, Inc.
112 Westwood Place, Suite 350
Brentwood, TN 37027
Attention: (i) Jerrell Shelton, President, Chief Executive Officer, and Chairman of the Board, (ii) Robert Stefanovich, Chief Financial Officer, Treasurer and Corporate Secretary, and (iii) Tony Ippolito, Vice President and General Counsel.
Email: JShelton@cryoport.com; RStefanovich@cryoport.com; and TIppolito@cryoport.com

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

Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626
Attention: Daniel Rees
Email: Daniel.Rees@lw.com

If to the Investor, to:

BTO Freeze Parent L.P.
c/o The Blackstone Group Inc.
345 Park Avenue
New York, NY 10154
Attention: Ram Jagannath
E-mail: Ram.Jagannath@Blackstone.com

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

Simpson Thacher & Bartlett LLP
425 Lexington Ave
New York, New York 10017
Attention: Anthony F. Vernace
E-mail: avernace@stblaw.com

Section 6.6 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as provided in Section 5.1, no assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other parties hereto. Any purported assignment or delegation in violation of this Agreement shall be null and void *ab initio*.

Section 6.7 Headings. The Section, Article and other headings contained in this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement.

Section 6.8 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Company and the Holders of a majority of the Registrable Securities outstanding at the time of such amendment. Any party hereto may, only by an instrument in writing, waive compliance by any other party or parties hereto with any term or provision hereof on the part of such other party or parties hereto to be performed or complied with. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any party hereto of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

Section 6.9 Interpretation; Absence of Presumption.

(a) For the purposes hereof: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (ii) the terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and paragraph references are to the Sections and paragraphs in this Agreement unless otherwise specified; (iii) the word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified; and (iv) the word "or" , "any" or "either" shall not be exclusive. References to a Person are also to its permitted assigns and successors. When calculating the period of time between which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded (and unless, otherwise required by Law, if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day)

(b) With regard to each and every term and condition of this Agreement, the parties hereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties hereto desire or are required to interpret or construe any such term or condition, no consideration will be given to the issue of which party hereto actually prepared, drafted or requested any term or condition of this Agreement.

Section 6.10 Severability. Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof, provided, however, that the parties will attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.

(*The next page is the signature page*)

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first above written.

CRYOPORT, INC.

By: _____
Name:
Title:

BTO FREEZE PARENT L.P.

By: _____
Name:
Title:

[Signature Page to Registration Rights Agreement]

EXHIBIT A
DEFINED TERMS

1. The following capitalized terms have the meanings indicated:

"**Affiliate**" of any Person means any Person, directly or indirectly, controlling, controlled by or under common control with such Person.

"**Automatic Shelf Registration Statement**" means an "automatic shelf registration statement" as defined under Rule 405.

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

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

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any similar successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

"**Holder**" means (a) any Investor holding Registrable Securities and (b) any transferee to which the rights under this Agreement have been transferred in accordance with Section 5.1.

"**Person**" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, other legal entity, or any government or governmental agency or authority.

"**register**", "**registered**" and "**registration**" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

"**Registration Expenses**" means (a) all expenses incurred by the Company in complying with this Agreement, including, without limitation, internal expenses, all registration, qualification, listing and filing fees, printing expenses, escrow fees, rating agency fees, fees and disbursements of the Company's independent registered public accounting firm, fees and disbursements of counsel for the Company, blue sky fees and expenses and (b) the fees and expenses of one counsel to the Holders in connection with this Agreement; provided, however, that Registration Expenses shall not include any Selling Expenses.

"**Registrable Securities**" means (a) any shares of Common Stock issued or issuable upon conversion of the Series C Convertible Preferred Stock, (b) the shares of Common Stock issued to the Investor pursuant to the Securities Purchase Agreement and (c) any Common Stock actually issued in respect of the securities described in clauses (a) or (b) above or this clause (c) upon any stock split, stock dividend, recapitalization, reclassification, merger, consolidation or similar event; provided, however, that the securities described in clauses (a), (b) and (c) above shall only be treated as Registrable Securities until the earliest of: (i) the date on which such security has been registered under the Securities Act and disposed of in accordance with an effective Registration Statement relating thereto; (ii) the date on which such security has been sold pursuant to Rule 144 and the security is no longer a Restricted Security; or (iii) the date on which such security is transferred in a transaction pursuant to which the registration rights are not also assigned in accordance with Section 5.1.

"**Restricted Securities**" means any Common Stock required to bear the legend set forth in Section 4.3(a) of the Securities Purchase Agreement.

"**Rule 144**" means Rule 144 promulgated under the Securities Act and any successor provision.

"**Rule 405**" means Rule 405 promulgated under the Securities Act and any successor provision.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder or any similar federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"**Selling Expenses**" means (a) all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders and (b) the fees and expenses of any counsel to the Holders.

"**Series C Convertible Preferred Stock**" means the Company's Series C Convertible Preferred Stock, par value $0.001 per share.

"**Shelf Registration**" means the Resale Shelf Registration or a Subsequent Shelf Registration, as applicable.

"**Transfer**" has the meaning given to such term in the Securities Purchase Agreement.

"**WKSI**" means a "well known seasoned issuer" as defined under Rule 405.

2. The following terms are defined in the Sections of the Agreement indicated:

INDEX OF TERMS

Term	Section
Agreement	Preamble
Applicable Matters	Section 6.2(b)
Chosen Court	Section 6.2(b)
Company	Preamble
Company Indemnified Parties	Section 4.1
Effectiveness Period	Section 1.2
Holder	Section 5.1
Holder Indemnified Parties	Section 4.2
Indemnified Party	Section 4.3
Indemnifying Party	Section 4.3
Investor	Preamble
Market Stand-Off	Section 3.6
Resale Shelf Registration	Section 1.1
Securities Purchase Agreement	Preamble
Subsequent Holder Notice	Section 1.5
Subsequent Shelf Registration	Section 1.3
Underwritten Offering	Section 1.6

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Aug 25, 2020

Cryoport Announces Agreement to Acquire MVE Biological Solutions from Chart Industries

Cryoport will become a leading global provider of cryogenic life sciences solutions Acquisitions of MVE, along with CRYOPDP is expected to increase Cryoport's revenue run rate to over $160 million and to be immediately accretive Blackstone to invest $275 million in Cryoport to fund the acquisition NASHVILLE, Tenn., Aug. 25, 2020 /PRNewswire/ -- Cryoport, Inc. (NASDAQ: CYRX) ("Cryoport" or the "Company"), a global leader in temperature- controlled supply chain solutions for the life sciences industry, today announced it has signed an agreement to acquire MVE Biological Solutions ("MVE"), a global leader in manufactured vacuum insulated products and cryogenic freezer systems for the life sciences industry, from Chart Industries, Inc. (NASDAQ: GTLS). This acquisition is a further step in Cryoport fulfilling its mission of being "the life sciences industry's preeminent partner for temperature- controlled supply chain solutions" by broadening its footprint of solutions and services to the life sciences industry, and in particular to the fast-growing cell and gene market. With the acquisitions of MVE, CryoPDP and Cryogene, Cryoport will provide fully integrated, end-to-end supply chain solutions to cell and gene therapy clients as well as the broader life sciences industry.

As a Cryoport company, MVE will expand Cryoport's role in the cell and gene therapy supply chain ecosystem, a business that is forecasted to grow 30% to 40% per year, and further enhance Cryoport's position as a leading player in the supply of cryogenic solutions for the life sciences industry. Under the agreement, Cryoport will acquire MVE in an all cash transaction valued at $320 million. Closing is expected by the end of the year, subject to regulatory approval and customary closing conditions, MVE's revenue for 2019 was approximately $83.7 million and it is expected to be immediately accretive.

Blackstone Investment and Financing

To fund the acquisition, Cryoport is receiving a $275 million investment from funds managed by Blackstone Tactical Opportunities (NYSE: BX) ("Blackstone"). Under the terms of its investment, Blackstone will purchase $250 million of a newly designated Perpetual 4% Series C Convertible Preferred stock of the Company, with a purchase price of $1,000 per share, and $25 million of common stock of the Company. The remainder of the purchase price for the MVE acquisition will be paid from the Company's cash balance. The preferred stock will be convertible into shares of Cryoport's common stock at a conversion price of $38.6152 per share, representing a premium of 15% to Cryoport's 30 trading day volume-weighted average price (VWAP) as of August 20th, 2020 prior to the announcement of the CRYOPDP acquisition and the $25 million of common stock will be sold at a price of $37.0076 per share. Blackstone's investment is subject to the closing of the acquisition of MVE and other customary closing conditions. In conjunction with Blackstone's investment in Cryoport, Cryoport will appoint Ram Jagannath, Senior Managing Director and Global Head of Healthcare for Blackstone Growth and Tactical Opportunities, to its Board of Directors upon the closing of the transaction. Additional information regarding the MVE acquisition and the Blackstone investment will be included in a Form 8-K to be filed by Cryoport with the Securities and Exchange Commission.

Strategic Rationale and Value Creation

Headquartered in Ball Ground, Georgia, USA, MVE provides cryogenic storage and transportation solutions for the life sciences industry through its advanced line of stainless steel freezers, aluminum dewars and related ancillary equipment used in the storage and transport of life sciences commodities, which includes the rapidly growing cell and gene therapies business. With over 226 dedicated employees and three primary facilities, in the states of Georgia and Minnesota and Cheng-du, China, MVE serves over 300 primary customers.

This transaction represents a hallmark event with two supporting life science leaders, Cryoport and MVE Biological Solutions, coming together to further de-risk processes for the life sciences industry at a time when these services are poised for exponential growth. Furthermore, it is the continuation of Cryoport's drive in further developing the highest quality, most reliable and comprehensive temperature-controlled supply chain company supporting the life sciences industry. Cryoport, with the addition of MVE will deliver a unique combination of passionate teams with outstanding industry knowledge; industry-leading global client coverage; advanced temperature controlled engineering capabilities; and unparalleled temperature-controlled supply change innovation.

Jerrell Shelton, CEO of Cryoport, said, "The acquisition of MVE Biological Solutions represents an important step in carrying out Cryoport's mission. It further entrenches us in the cell and gene therapy supply chain ecosystem at a time when cell and gene therapies are experiencing rapid and sustained growth, and with an even more exciting growth story ahead. Bringing MVE Biological Solutions under the Cryoport umbrella, which will include Cryoport Systems, Cryogene, and the recently announced agreement to acquire CRYOPDP is expected to increase our revenue run rate to over $160 million and to be immediately accretive.

"Both companies serve sophisticated life sciences clients, and having these two life sciences supporting leaders working together will amplify the high quality and reliability their respective customers have come to rely on. The agreement to acquire MVE follows on the heels of our agreement to acquire CRYOPDP, a France-based specialty temperature-controlled life sciences logistics company. This marks an exciting time in our growth as we become a larger and more comprehensive global player in supporting the fast growing cell and gene therapy industry and the life sciences industry, at large, with the most advanced and reliable temperature-controlled supply chain solutions in the world."

Ram Jagannath, Senior Managing Director of Blackstone, said, "Life sciences and logistics are two of Blackstone's highest-conviction investment areas and we're excited to back an industry-leader at the cross-section of these fast-growing sectors. Together, Cryoport and MVE Biological Solutions offer a unique combination of industry knowledge, client coverage, engineering and innovation. Through Cryoport's acquisition, we believe MVE Biological Solutions will deliver strong growth as the demand for its solutions from cell and gene therapy customers continues to increase. This acquisition provides multiple value creation opportunities for Cryoport and MVE Biological Solutions that offer additional revenue growth upside, including the development of new product innovations, opportunities to grow with key distributors in the U.S., and the opportunity to increase direct customer sales and distributor relationships globally. This strategic acquisition allows Cryoport to continue to increase services for cell and gene therapy customers, providing mission- critical solutions helping improve patient outcomes and save lives."

Advisors

Morgan Stanley & Co. LLC is acting as exclusive financial advisor to Cryoport and Latham & Watkins LLP is acting as its legal advisor. Goldman, Sachs & Co. is acting as exclusive financial advisor to Blackstone and Simpson Thacher & Bartlett LLP is acting as its legal advisor.

Conference Call

Cryoport management will host a conference call and webcast, including a slide deck, at 8:30am ET on Tuesday, August 25, 2020 to discuss the acquisition.

Conference Call Information

Date:	Tuesday, August 25, 2020
Time:	8:30 a.m. ET
Dial-in numbers:	+1 -855-327-6837 (U.S.), +1 631-891-4304 (International)
Confirmation code:	Request the "Cryoport Shareholder Call"
Webcast and slides:	'Investor Relations' section at www.cryoport.com or at this link. Please allow 10 minutes prior to the call to visit this site to download and install any necessary audio software.

The call will be recorded and available approximately three hours after completion of the live event on the Investor Relations section of the Company's website at www.cryoport.com for a limited time. To access the replay of the webcast, please follow this link. A dial-in replay of the call will also be available, to those interested, until September 1, 2020. To access the replay, dial +1 844-512-2921 (United States) or +1 412-317-6671 (International) and enter replay pin number: 10010868.

About Cryoport, Inc.

Cryoport, Inc. (Nasdaq: CYRX) is redefining temperature controlled supply chain support for the life sciences industry by providing a broad platform of temperature-controlled supply chain solutions, serving the Biopharma, Reproductive Medicine, and Animal Health markets. Our mission is to support life and health on earth by providing reliable and comprehensive solutions for the life sciences industry through our advanced technologies, global supply chain network and dedicated scientists, technicians and supporting team of professionals. Through our purpose-built, proprietary Cryoport Express® Shippers; Cryoportal® information technology; validated Global Logistics Centers; smart and sustainable temperature-controlled logistics solutions; and biostorage/biobanking services, Cryoport serves clients in life sciences research, clinical trials, and product commercializations. We support life-saving advanced cell and gene therapies and deliver vaccines, protein producing materials, and IVF materials in over 100 countries around the world. For more information, visit www.cryoport.com or follow @cryoport on Twitter at www.twitter.com/cryoport for live updates.

About Blackstone and Blackstone Tactical Opportunities

Blackstone is one of the world's leading investment firms. We seek to create positive economic impact and long-term value for our investors, the companies we invest in, and the communities in which we work. We do this by using extraordinary people and flexible capital to help companies solve problems. Our asset management businesses, with $564 billion in assets under management, include investment vehicles focused on private equity, real estate, public debt and equity, growth equity, opportunistic, non-investment grade credit, real assets and secondary funds, all on a global basis.

Blackstone Tactical Opportunities is Blackstone's opportunistic investment platform. This team invests globally across asset classes, industries and geographies, seeking to identify and execute on attractive, differentiated investment opportunities. As part of the strategy, the team leverages the intellectual capital across Blackstone's various businesses while continuously optimizing its approach in the face of ever-changing market conditions. Further information is available at www.blackstone.com. Follow Blackstone on Twitter @Blackstone.

Forward-Looking Statements

Statements in this news release which are not purely historical, including statements regarding Cryoport's intentions, hopes, beliefs, expectations, representations, projections, plans or predictions of the future are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words or phrases such as "believe," "may," "could," "will," "estimate," "continue," "anticipate," "intend," "seek," "plan," "expect," "should," "would" or similar expressions are intended to identify forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties.

These forward-looking statements include, but are not limited to, statements concerning closing of the MVE acquisition and the related Blackstone investment, the potential benefit of Cryoport's acquisition of MVE and the estimated or anticipated future business, performance and results of operations following the transaction. It is important to note that Cryoport's actual results could differ materially from those in any such forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, (1) the conditions to the closing of the MVE acquisition or the Blackstone investment may not be satisfied; (2) the MVE acquisition or the Blackstone investment may involve unexpected costs, liabilities or delays; (3) the business of the Company may suffer as a result of uncertainty surrounding the MVE acquisition or the Blackstone investment; (4) the occurrence of any event, change or other circumstances that could give rise to the termination of the MVE purchase agreement or the Blackstone investment agreement; (5) risks and uncertainties associated with the effect of changing economic conditions, (6) trends in the products markets, (7) variations in Cryoport's cash flow, (8) market acceptance risks, (9) technical development risks and (10) other risks to the consummation of the MVE acquisition or the Blackstone investment, including the risk that the MVE acquisition or the Blackstone investment will not be consummated within the expected time period or at all. Cryoport's business could be affected by a number of other factors, including the risk factors listed from time to time in Cryoport's SEC reports including, but not limited to, Cryoport's 10-K for the year ended December 31, 2019, Cryoport's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020 and any subsequent filings with the SEC. Cryoport cautions investors not to place undue reliance on the forward-looking statements contained in this press release, which speak only as of the date of this press release. Except as required by law, Cryoport disclaims any obligation, and does not undertake, to update or revise any forward-looking statements in this press release.

View original content to download multimedia:http://www.prnewswire.com/news-releases/cryoport-announces-agreement-to-acquire-mve-biological-solutions-from-chart-industries-301117704.html

SOURCE Cryoport, Inc.

Exhibit 99.2


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Cryoport to acquire MVE Biological Solutions
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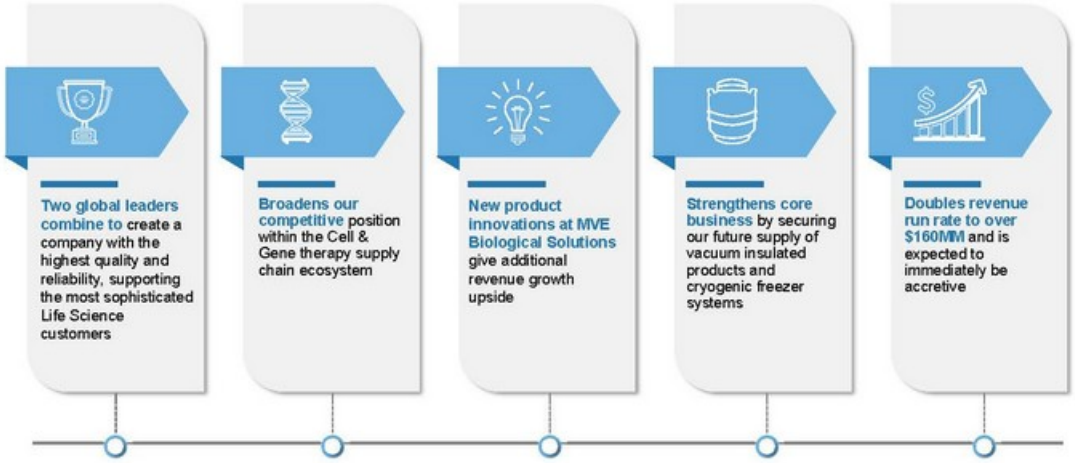
Forward Looking Statements

Statements in this presentation and statements made orally during this presentation are not purely historical, including statements regarding Cryoport's intentions, hopes, beliefs, expectations, representations, projections, plans or predictions of the future are forward- looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words or phrases such as "believe," "may," "could," "will," "estimate," "continue," "anticipate," "intend," "seek," "plan," "expect," "should," "would" or similar expressions are intended to identify forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties.

These forward-looking statements include, but are not limited to, statements concerning the potential benefit of Cryoport's acquisition of MVE and the estimated or anticipated future business, performance and results of operations following the transaction. It is important to note that Cryoport's actual results could differ materially from those in any such forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, (1) the conditions to the closing of the MVE acquisition or the Blackstone financing transaction may not be satisfied; (2) the MVE acquisition or financing transaction may involve unexpected costs, liabilities or delays; (3) the business of the Company may suffer as a result of uncertainty surrounding the MVE acquisition or financing transaction; (4) the occurrence of any event, change or other circumstances that could give rise to the termination of the MVE purchase agreement or the financing transaction agreement; (5) risks and uncertainties associated with the effect of changing economic conditions, (6) trends in the products markets,
(7) variations in Cryoport's cash flow, (8) market acceptance risks, (9) technical development risks and (10) other risks to the consummation of the MVE acquisition or the financing transaction, including the risk that the MVE acquisition or the financing transaction will not be consummated within the expected time period or at all. Cryoport's business could be affected by a number of other factors, including the risk factors listed from time to time in Cryoport's SEC reports including, but not limited to, Cryoport's 10-K for the year ended December 31, 2019, Cryoport's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020 and any subsequent filings with the SEC. Cryoport cautions investors not to place undue reliance on the forward-looking statements contained in this press release, which speak only as of the date of this press release. Except as required by law, Cryoport disclaims any obligation, and does not undertake, to update or revise any forward-looking statements in this press release.

Strategic Rationale of Acquisition

MVE BIOLOGICAL SOLUTIONS – ADDING STRENGTH AND REACH



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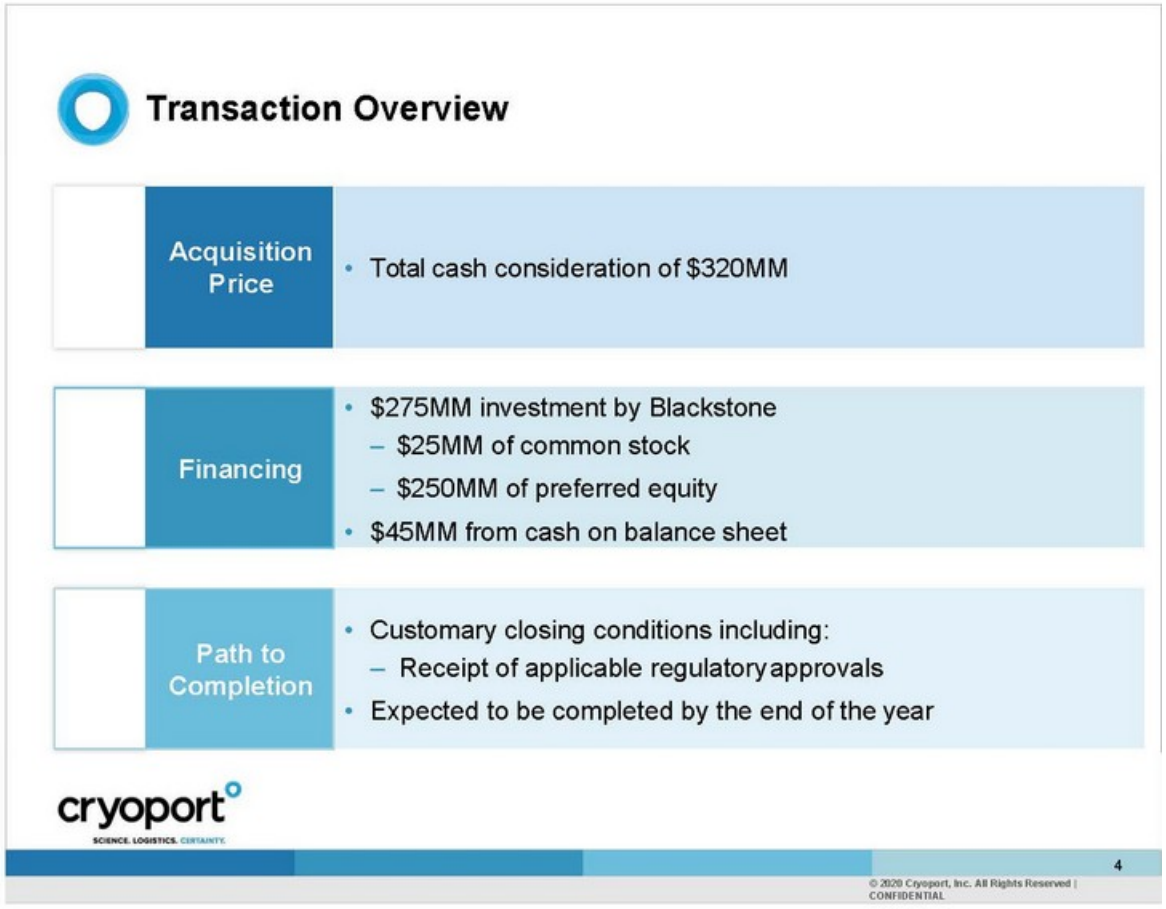
Transaction Overview
Acquisition Price
• Total cash consideration of $320MM
Financing
• $275MM investment by Blackstone
– $25MM of common stock
– $250MM of preferred equity
• $45MM from cash on balance sheet
Path to Completion
• Customary closing conditions including:
– Receipt of applicable regulatory approvals
• Expected to be completed by the end of the year
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MVE Biological Solutions Overview

Headquarters: Ball Ground, GA

226 employees globally

Global leader in the life sciences industry

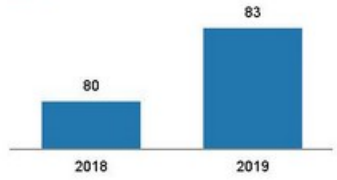
Over 50 years of setting the standard for cryogenic storage

- MVE Biological Solutions is the **leading manufacturer of cryogenic life sciences equipment**, providing freezers, dewars and related equipment used for storage and transportation
- Three primary locations
  - Ball Ground, GA
  - New Prague, MN
  - Chengdu, China

ATTRACTIVE FINANCIAL PROFILE

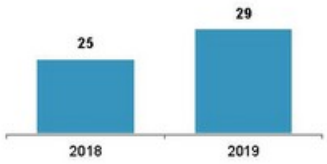
Revenue

$MM



Adjusted EBITDA [1]

$MM



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Note:
1. Adjusted EBITDA derived from Chart Industries audited results and includes estimated standalone costs

MVE – A Trusted Partner to Life Sciences

A GLOBAL LEADER OF CRYOGENIC SHIPPING AND STORAGE SOLUTIONS

MVE BIOLOGICAL ALUMINUM SOLUTIONS

Standard Capacity and Extra Capacity stationary Storage

Vapor & Doble Shippers

CT-50 & CT-250 Blood Bag Vapor Shippers

Cryo-Cube

CryoSystems

CryoSystem 6000 Full Auto

Lab Series

MVE BIOLOGICAL STAINLESS STEEL SOLUTIONS

Open Top Freezers

HE and Heco Freezers

Vario Freezers

Fusion

CryoCart

Automation

1536 PD Dry Shipper

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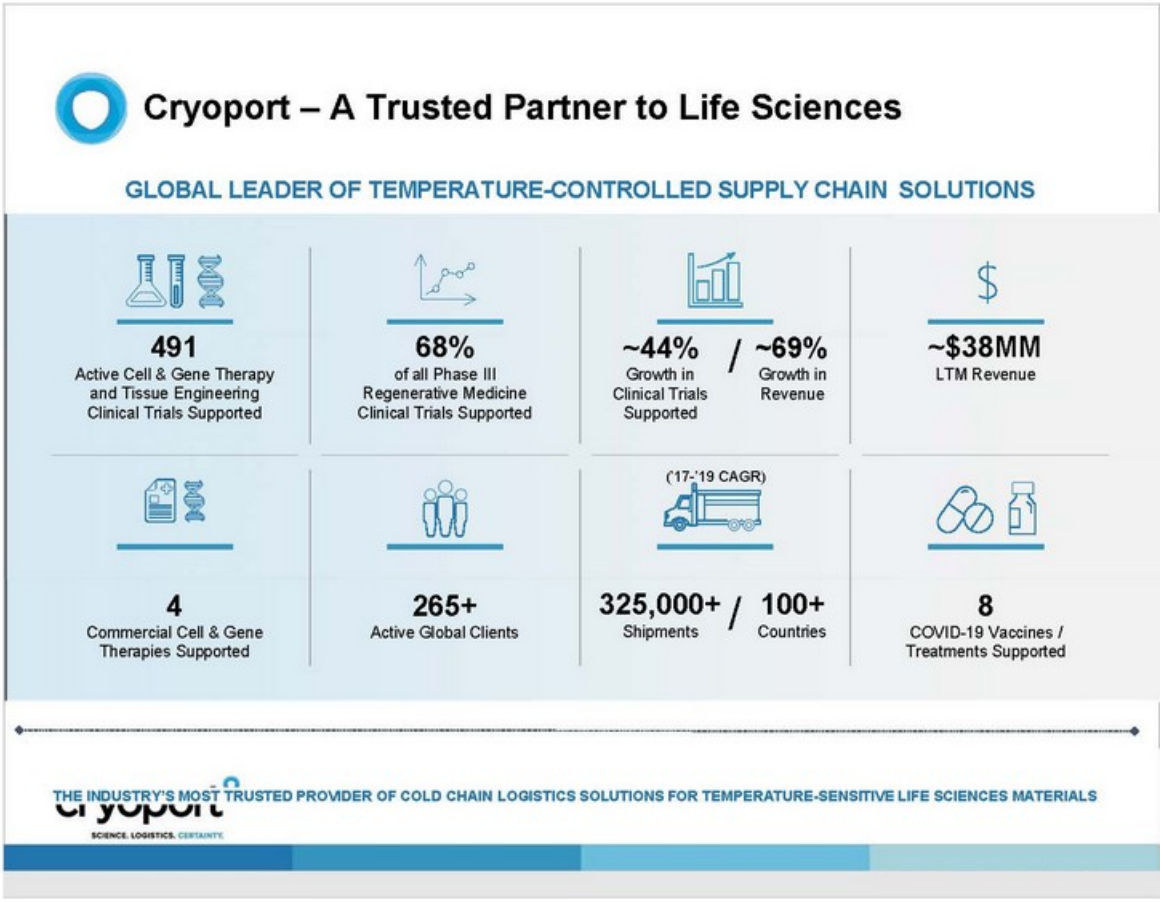
THE INDUSTRY'S MOST TRUSTED PROVIDER OF CRYOGENIC SOLUTIONS


Cryoport – A Trusted Partner to Life Sciences
GLOBAL LEADER OF TEMPERATURE-CONTROLLED SUPPLY CHAIN SOLUTIONS
491
Active Cell & Gene Therapy and Tissue Engineering Clinical Trials Supported
68%
of all Phase III Regenerative Medicine Clinical Trials Supported
~44%
Growth in Clinical Trials Supported
/
~69%
Growth in Revenue
$
~$38MM
LTM Revenue
4
Commercial Cell & Gene Therapies Supported
265+
Active Global Clients
('17-'19 CAGR)
325,000+
Shipments
/
100+
Countries
8
COVID-19 Vaccines / Treatments Supported
THE INDUSTRY'S MOST TRUSTED PROVIDER OF COLD CHAIN LOGISTICS SOLUTIONS FOR TEMPERATURE-SENSITIVE LIFE SCIENCES MATERIALS
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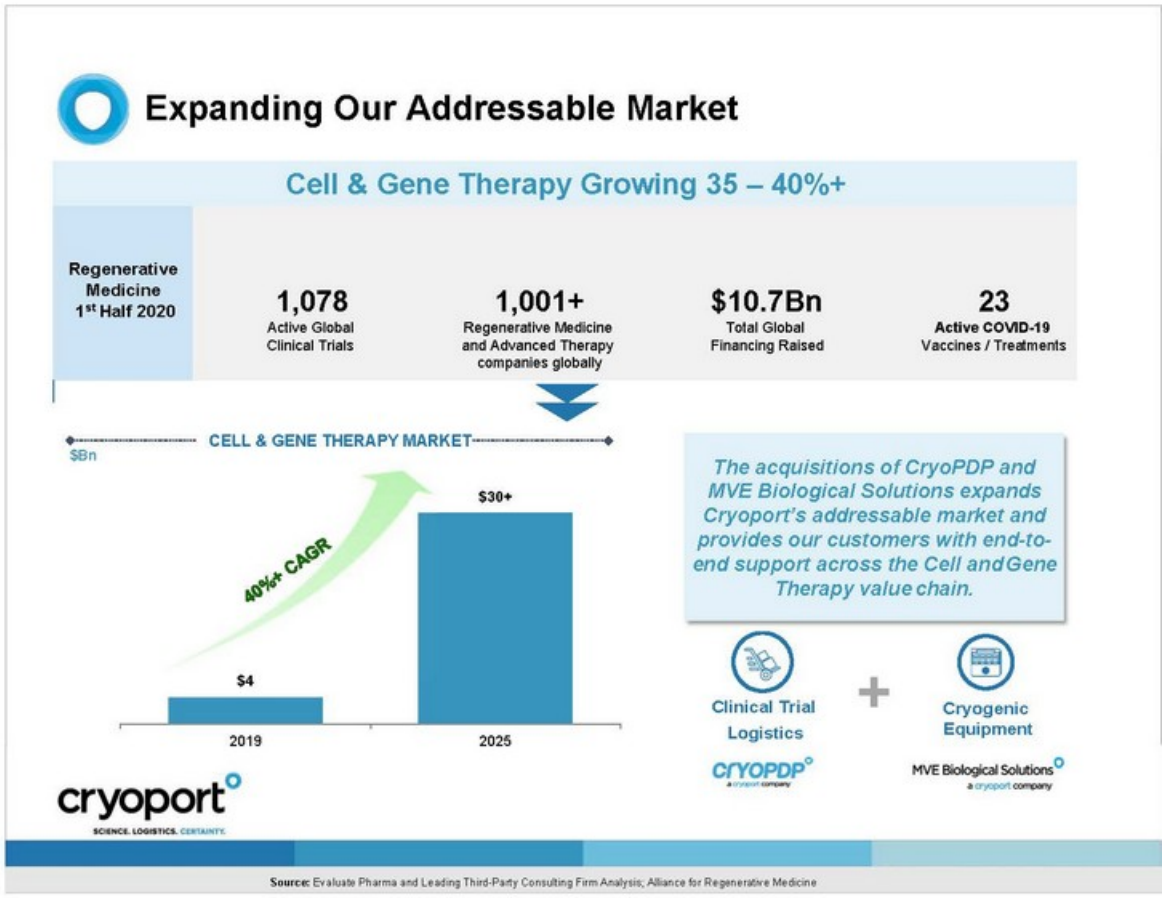
Expanding Our Addressable Market
Cell & Gene Therapy Growing 35 – 40%+
Regenerative Medicine 1st Half 2020
1,078
Active Global Clinical Trials
1,001+
Regenerative Medicine and Advanced Therapy companies globally
$10.7Bn
Total Global Financing Raised
23
Active COVID-19 Vaccines / Treatments
CELL & GENE THERAPY MARKET
$Bn
$30+
40%+ CAGR
$4
2019
2025
The acquisitions of CryoPDP and MVE Biological Solutions expands Cryoport's addressable market and provides our customers with end-to-end support across the Cell and Gene Therapy value chain.
Clinical Trial Logistics
Cryogenic Equipment
CRYOPDP
MVE Biological Solutions
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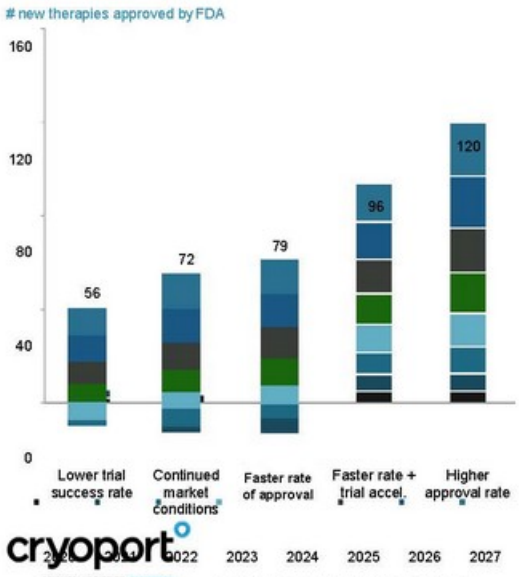
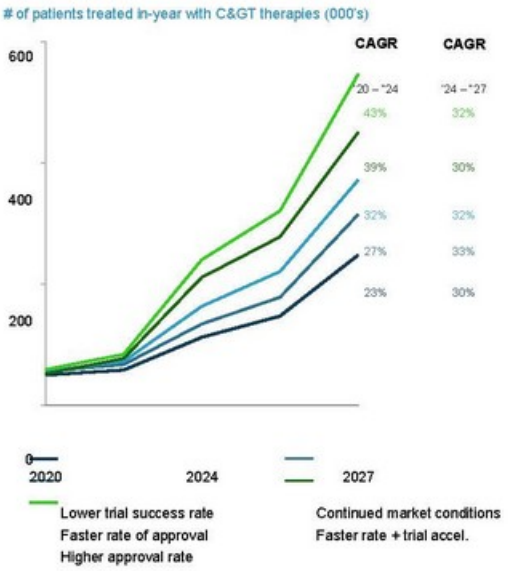
Source: Evaluate Pharma and Leading Third-Party Consulting Firm Analysis; Alliance for Regenerative Medicine

Attractive High-Growth Regenerative Medicine Market Driving Demand

Therapies Approved by Scenario



Patients Treated per Year in Trials of Commercially Approved Therapies



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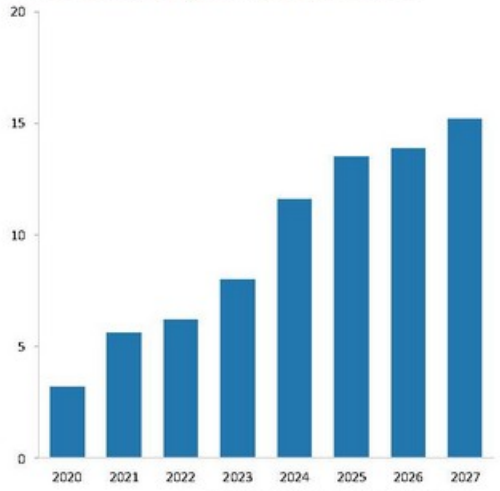
Source: Leading third party consulting firm analysis

Notes: Some therapies, such as those focused on treating Hepatitis A and B, will drive higher patient populations; In order to avoid predicting success of individual therapies, we have assumed a standard number of treatable patients per therapy based on average incidents currently in trials. This rate assumes that the total patient population treatable by each therapy does not wholly "replenish" each year, given rare nature of many disease that C & GT targets

Attractive High-Growth Regenerative Medicine Market Driving Demand

Therapies Approved [1]

new therapies (requiring cryogenic shipping) approved by FDA



Addressable Market for Cryogenic Shipping

$MM

~80+

Therapies to be **approved by the FDA** and requiring cryogenic shipping

~$15MM+

Revenue per commercial drug (Range: $2MM - $28MM)

~$1.2Bn+[2]

Revenue opportunity for commercial cryogenic shipping

+ Additional TAM from CryoPDP and MVE

Source: Leading third party consulting firm analysis

Notes:

1. Some therapies, such as those focused on treating Hepatitis A and B, will drive higher patient populations; In order to avoid predicting success of individual therapies, we have assumed a standard number of treatable patients per therapy based on average incidents currently in trials. This rate assumes that the total patient population treatable by each therapy does not wholly "replenish" each year, given rare nature of many disease that C & GT targets
2. Excludes revenue opportunity for pre-commercial, clinical trials (CryoPDP, MVE Biological Solutions)

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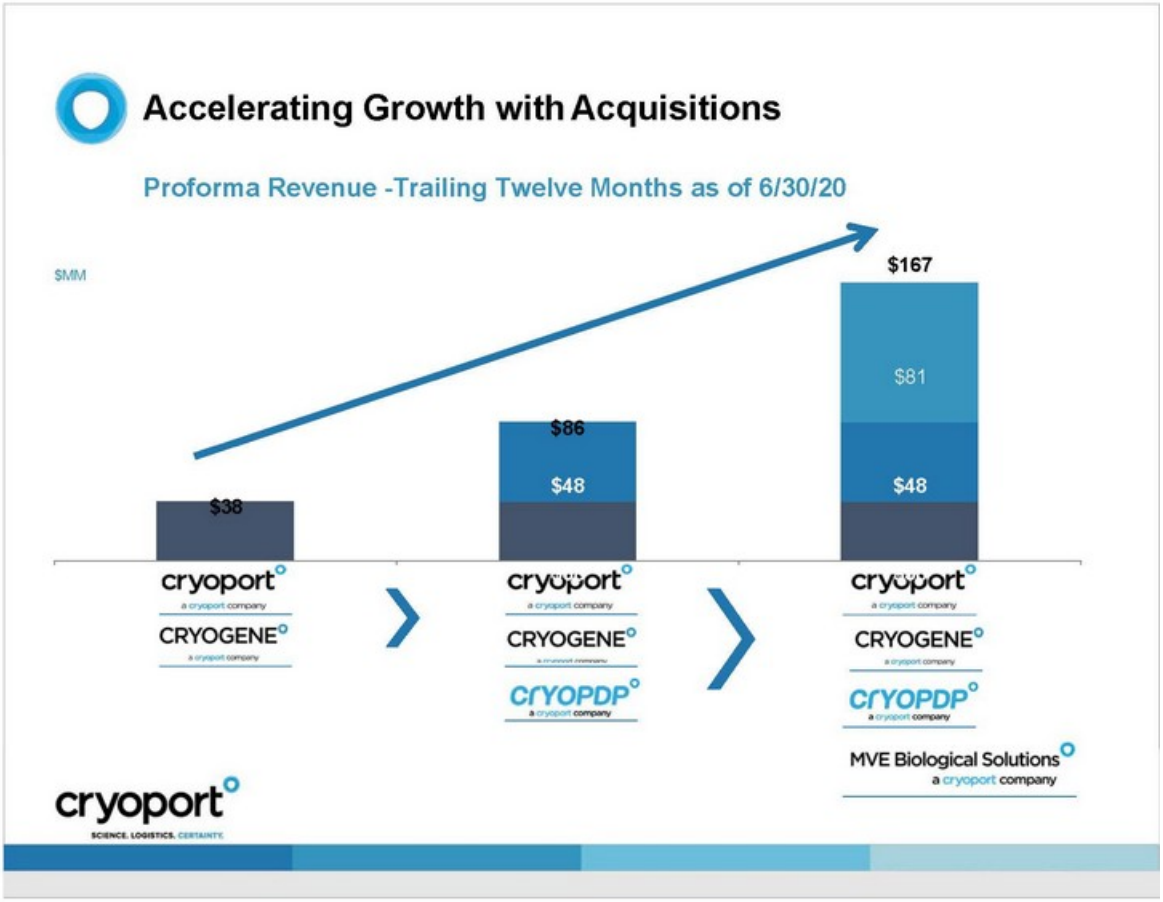
Accelerating Growth with Acquisitions
Proforma Revenue -Trailing Twelve Months as of 6/30/20
$MM
$38
$86
$48
$167
$81
$48
cryoport
a cryoport company
CRYOGENE
a cryoport company
CRYOPDP
a cryoport company
MVE Biological Solutions
a cryoport company
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Amplifying Cryoport's Strength across the Life Sciences Landscape

cryoport a cryoport company / CRYOGENE a cryoport company + CRYOPDP a cryoport company + MVE Biological Solutions a cryoport company

Market Leader	✓ **CryoPDP:** 3rd largest specialty global logistics player ✓ **MVE:** A leading manufacturer of cryogenic equipment
Product Expansion	✓ **CryoPDP:** Additional temperature-controlled ranges (e.g. viral vector logistics) ✓ **MVE:** Adds vacuum insulated products and cryogenic freezer systems
Geographic Expansion	✓ **CryoPDP:** 22 operating facilities in 12 countries ✓ **MVE:** Presence across the US, Europe and Asia
Scale	✓ **CryoPDP:** 300+ new clients and forward-operating locations ✓ **MVE:** 300+ new clients and expanded storage capabilities
Revenue	✓ **CryoPDP:** ~Doubles revenue run-rate to over $80MM ✓ **MVE:** ~Doubles revenue run-rate again to over $160MM
Further Exposure in Cell & Gene Therapy	✓ **CryoPDP:** Established network aligned to manufacturing hubs in EMEA and APAC ✓ **MVE:** Supplies industry with vital cryogenic storage equipment and services
Profitable	✓ **Combination** immediately accretive

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Partnership with Blackstone

Blackstone (BX) is one of the most active healthcare investors globally and will provide Cryoport with an unmatched network to support the growing demand in Cell and Gene Therapy.

Blackstone — Global Platform

Largest
Alternative Asset Management Firm in the World

$564Bn
Blackstone Assets Under Management (1)

24
Global Offices

500K
Portfolio Employees

The $275mm investment will be funded through Blackstone Tactical Opportunities (Tac Opps), the leading opportunistic investment platform in the world with $30B in AUM.(2) Coupled with the power and reach of Blackstone, Tac Opps provides companies with flexible capital solutions in deep partnership with management teams.

Commitment to Healthcare

Blackstone has a track record of investment in healthcare, with~$11bn in equity committed to the sector in 22 transactions, totaling ~$44bn in value. BX has a deep thematic focus on technology expansion in the industry and pharma services.(3)

Select Investments: HEALTHEDGE, sema4, Catalent, BioMed Realty (Discover here), connective Rx

Blackstone Life Sciences (BXLS) partners with pharma, biotech, and medical technology companies to develop innovative products that have the potential to save lives.

Select Investments: *Gene therapy JV w/* FERRING PHARMACEUTICALS; Alnylam PHARMACEUTICALS

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Notes:
1. AUM is estimated and not audited
2. For the entire Tactical Opportunities ("Tac Opps") business inclusive of co-investments and Tac Opps adjacencies (TOSI, UK Mortgages, Rothley Life Fund, and PTI Fund
3. The investments (and related performance information) presented above were made by a number of different Blackstone funds whose overall strategy and terms vary significantly from each other and from those of and Tac Opps fund. Those investments were not managed as a single portfolio and did not involve the same Blackstone professionals who will be involved in the management and operations of any future Tac Opps investments. Moreover, future investments made by Tac Opps will be comparable to the investments set forth herein or that Tac Opps will be able to implement its investment strategy or achieve its investment objectives.

Operating Holding Structure – Expanding Tools and Solutions for the Life Sciences

Synergies – Cryoport Family of Companies – Separate P&L Responsibilities – Intercompany agreements and sales incentives

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Science. Logistics. Certainty.

Thank you!

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